

# **ATTACHMENT 17**

HIGHLY CONFIDENTIAL

Feyman, Steven G.

April 25, 2014

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DIVISION OF PENNSYLVANIA

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:  
IN RE: PROCESSED EGG :  
PRODUCTS ANTITRUST :  
LITIGATION : MDL NO. 2002  
: 08-md-02002  
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THIS DOCUMENT RELATES TO: :  
ALL ACTIONS :  
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Videotaped deposition  
STEVEN G. FEYMAN

April 25, 2014  
8:02 a.m.

Taken at:  
Nestlé USA  
30003 Bainbridge Road  
Solon, Ohio

Donnalee Cotone, RMR, CRR  
NCRA Realtime Systems Administrator

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2	<p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of Defendants Michael Foods, Inc.</p> <p>4 and Papetti's Hygrade Egg Products, Inc.:</p> <p>5 Stinson Leonard Street LLP, by</p> <p>6 DOUGLAS R. BOETTGE, ESQ.</p> <p>7 150 South Fifth Street, Suite 2300</p> <p>8 Minneapolis, Minnesota 55402</p> <p>9 612-335-1500</p> <p>10 douglas.boettge@stinsonleonard.com</p> <p>11</p> <p>12 On behalf of Nestlé USA and The</p> <p>13 Deponent:</p> <p>14 Jenner &amp; Block, LLP, by</p> <p>15 RICHARD P. CAMPBELL, ESQ.</p> <p>16 353 North Clark Street</p> <p>17 Chicago, Illinois 60654-3456</p> <p>18 312-222-9350</p> <p>19 rcampbell@jenner.com</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 Keith McGregor, The Videographer</p> <p>23 Douglas B. Besman, Esq.</p> <p>24 Senior Counsel, Nestlé USA</p> <p>25 ~ ~ ~ ~ ~</p>	4	<p>1 INDEX OF EXHIBITS</p> <p>2 NUMBER DESCRIPTION MARKED</p> <p>3 Exhibit 1 Defendant's Amended Notice .. 10</p> <p>4 of Deposition</p> <p>5</p> <p>6 Exhibit 2 Second Amended Complaint..... 62</p> <p>7</p> <p>8 Exhibit 3 Memo to John Hill from Tom .. 74</p> <p>9 Diercks, dated 9-14-06,</p> <p>10 Bates Labeled MFI0109021</p> <p>11</p> <p>12 Exhibit 4 E-Mail Chain, Bates Labeled . 76</p> <p>13 MFI0032735-0032737</p> <p>14 Exhibit 5 Internal Michael Foods ..... 79</p> <p>15 Document, Bates Labeled</p> <p>16 MFI0553015-0553016</p> <p>17 Exhibit 6 E-Mail from Pres Colwell to . 111</p> <p>18 Steve Warner and Bill Bush</p> <p>19 w/Attachment, dated</p> <p>20 3-31-04, Bates Labeled</p> <p>21 MFI0259556</p> <p>22 Exhibit 7 Internal Michael Foods ..... 115</p> <p>23 Document, Bates Labeled</p> <p>24 MFI0102001-0102006</p> <p>25 Exhibit 8 Speed Analysis, Bates ..... 161</p> <p>Labeled NES00004501</p> <p>Exhibit 9 Fax to Terry Baker from ..... 166</p> <p>Pres Colwell w/Attachments,</p> <p>dated 11-16-04, Bates</p> <p>Labeled MFI0259539-10259546</p> <p>Exhibit 10 Egg Purchase 2000-2005, ..... 172</p> <p>Bates Labeled NES00004500</p> <p>Exhibit 11 E-Mail Chain w/Attachment, .. 225</p> <p>Bates Labeled</p> <p>NES00000394-00000396</p> <p>Exhibit 12 E-Mail Chain w/Attachment, .. 228</p> <p>Bates Labeled</p> <p>MFI0259554-0259555</p>
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<p style="text-align: right;">6</p> <p>1 INDEX OF PREVIOUSLY MARKED EXHIBITS MENTIONED</p> <p>2</p> <p>3 NUMBER DESCRIPTION MARKED</p> <p>4 Trask E-Mail Chain, Bates Labeled . 175</p> <p>5 Exhibit 11 NES00000177-00000183</p> <p>6 Trask Two E-Mails, Bates Labeled .. 178</p> <p>7 Exhibit 12 NEX0000076</p> <p>8</p> <p>9 Trask E-Mail from Ed Lewis to ..... 179</p> <p>10 Exhibit 13 Various Recipients</p> <p>11 w/Attachment, Bates Labeled</p> <p>12 NES00000482-00000484</p> <p>13 Trask E-Mail Chain, Bates Labeled . 185</p> <p>14 Exhibit 14 NES00000403-00000405</p> <p>15</p> <p>16 Trask E-Mail Chain, Bates Labeled . 210</p> <p>17 Exhibit 15 MF101093250109326</p> <p>18 Trask E-Mail Chain w/Attachment, .. 213</p> <p>19 Exhibit 16 Bates Labeled</p> <p>20 NES00000394-00000396</p> <p>21 Exhibit 17 E-Mail Chain, Bates Labeled . 216</p> <p>22 Trask NES00000499-00000502</p> <p>23</p> <p>24 Trask E-Mail Chain w/Attachment, .. 227</p> <p>25 Exhibit 18 Bates Labeled</p> <p>NES00000072-00000075</p>	<p style="text-align: right;">8</p> <p>1 THE VIDEOGRAPHER: Thank you.</p> <p>2 Will the court reporter please swear</p> <p>3 the witness.</p> <p>4 STEVEN G. FEYMAN, of lawful age, called</p> <p>5 for examination, being by me first duly sworn,</p> <p>6 as hereinafter certified, deposed and said as</p> <p>7 follows:</p> <p>8 EXAMINATION OF STEVEN G. FEYMAN</p> <p>9 BY MR. BOETTGE:</p> <p>10 Q. Good morning, Mr. Feyman.</p> <p>11 A. <b>Good morning.</b></p> <p>12 Q. We met a few moments ago. My name</p> <p>13 is Doug Boettge. I represent the defendant,</p> <p>14 Michael Foods, in this matter.</p> <p>15 Could you state your full name and</p> <p>16 address?</p> <p>17 A. <b>Steven G. Feyman. I reside at 29</b></p> <p>18 <b>Ibis, I-B-I-S, Drive, Akron, Ohio 44319.</b></p> <p>19 Q. And, Mr. Feyman, do you understand</p> <p>20 that today you'll be testifying both in your</p> <p>21 individual capacity and on behalf of Nestlé?</p> <p>22 A. <b>Yes, I do.</b></p> <p>23 Q. And have you ever had your</p> <p>24 deposition taken before?</p> <p>25 A. <b>Yes, I have.</b></p>
<p style="text-align: right;">7</p> <p>1 THE VIDEOGRAPHER: We're on the</p> <p>2 record. The time is 8:02. I represent</p> <p>3 Henderson Legal Services. My name is</p> <p>4 Keith McGregor. I'm the videographer. The date</p> <p>5 is April 5th --</p> <p>6 MR. CAMPBELL: No.</p> <p>7 THE VIDEOGRAPHER: I'm sorry. 25th.</p> <p>8 Pardon me -- 2014. This is the deposition of</p> <p>9 Mr. Steven Feyman. It is taking place at 30003</p> <p>10 Bainbridge Road, Cleveland, Ohio. The Case</p> <p>11 Number is MDL 2002, In Re: Processed Egg</p> <p>12 Products Antitrust Litigation in the United</p> <p>13 States District Court for the Eastern District</p> <p>14 of Pennsylvania.</p> <p>15 Donnalee Cotone is our reporter.</p> <p>16 Will counsel please state their</p> <p>17 appearances.</p> <p>18 MR. BOETTGE: Doug Boettge with the</p> <p>19 law firm of Stinson Leonard Street, representing</p> <p>20 the defendant, Michael Foods.</p> <p>21 MR. CAMPBELL: Richard Campbell of</p> <p>22 Jenner &amp; Block, LLP, representing Nestlé USA as</p> <p>23 well as the deponent, Mr. Feyman.</p> <p>24 MR. BESMAN: And I'm Douglas Besman.</p> <p>25 I'm house counsel for Nestlé USA.</p>	<p style="text-align: right;">9</p> <p>1 Q. Can you let me know how many times?</p> <p>2 A. <b>One time.</b></p> <p>3 Q. When was that?</p> <p>4 A. <b>It has to be over 20 years ago.</b></p> <p>5 Q. And what were the circumstances?</p> <p>6 A. <b>Pertained to a place of employment</b></p> <p>7 <b>that a number of employees took action because</b></p> <p>8 <b>of a stock plan that was rescinded.</b></p> <p>9 Q. Let me briefly explain some of the</p> <p>10 ground rules this morning since it's been a few</p> <p>11 years since your last deposition.</p> <p>12 I'll be asking a series of questions</p> <p>13 today and the court reporter will be</p> <p>14 transcribing your answers.</p> <p>15 Do you understand?</p> <p>16 A. <b>Yes, I do.</b></p> <p>17 Q. And you need to answer audibly</p> <p>18 because the court reporter can't take head</p> <p>19 shakes down on the record.</p> <p>20 A. <b>Understand.</b></p> <p>21 Q. Also, it's important that you</p> <p>22 understand the questions that I'm asking, so if</p> <p>23 at any time today you don't understand one of my</p> <p>24 questions, I want you to stop me, ask me to</p> <p>25 clarify and I'd be happy to ask the question</p>

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<p style="text-align: right;">10</p> <p>1 slightly different, in a way that you can 2 understand.</p> <p>3 Is that fair?</p> <p>4 <b>A. I shall, yes.</b></p> <p>5 Q. And if you do answer one of my 6 questions, I'll assume that you did understand 7 the question.</p> <p>8 Is that fair as well?</p> <p>9 <b>A. Yes, it is.</b></p> <p>10 Q. Any reason that you can't give full 11 and complete testimony today?</p> <p>12 <b>A. There is none.</b></p> <p>13 - - - - -</p> <p>14 <b>(Thereupon, Deposition Exhibit 1, 15 Defendant's Amended Notice of 16 Deposition, was marked for purposes 17 of identification.)</b></p> <p>18 - - - - -</p> <p>19 Q. Mr. Feyman, I'm showing you what 20 we've marked as Feyman Exhibit 1. 21 Have you seen this document before?</p> <p>22 <b>A. Yes, I have.</b></p> <p>23 Q. You'll see that there is -- well, 24 I'll identify it for the record. This is 25 Defendants' Amended Notice of Deposition of</p>	<p style="text-align: right;">12</p> <p>1 <b>hours maybe, and this morning about a half an 2 hour.</b></p> <p>3 Q. Did you speak to anyone in 4 preparation for your deposition today?</p> <p>5 <b>A. No, I did not.</b></p> <p>6 Q. When you noted you reviewed 7 materials submitted as part of the request, were 8 these documents that Nestlé had provided to 9 defendants in the litigation?</p> <p>10 <b>A. I believe so, yes.</b></p> <p>11 Q. Do you recall approximately how many 12 documents you reviewed?</p> <p>13 <b>A. Maybe 20 pages of materials.</b></p> <p>14 Q. And when did you reviews those 15 documents?</p> <p>16 <b>A. Late yesterday and again this 17 morning.</b></p> <p>18 Q. Did you do anything else to prepare 19 for the deposition today?</p> <p>20 <b>A. I did not.</b></p> <p>21 Q. Could you briefly give me your 22 educational background?</p> <p>23 <b>A. I have an undergraduate degree in 24 psychology, and I have a Master's degree in 25 industrial psychology.</b></p>
<p style="text-align: right;">11</p> <p>1 Plaintiff Nestlé Pursuant to Rule 30(b)(6). 2 You'll see that there is an exhibit 3 with a list of topics. It begins on page 4. 4 It's page 4 of the exhibit.</p> <p>5 <b>A. Yes, I have it.</b></p> <p>6 Q. Do you see that?</p> <p>7 <b>A. Yes, I do.</b></p> <p>8 Q. And you understand that you are the 9 person that Nestlé has identified to testify on 10 behalf of Nestlé as to these topics?</p> <p>11 <b>A. I do.</b></p> <p>12 Q. What did you do to prepare for the 13 deposition today, Mr. Feyman?</p> <p>14 <b>A. I met with counsel, I reviewed the 15 material that's in front of me here, and I 16 reviewed some of the materials that we submitted 17 as part of the request for this case.</b></p> <p>18 Q. The material in front of you, are 19 you referring to the notice of deposition?</p> <p>20 <b>A. That is correct. Yes.</b></p> <p>21 Q. When did you meet with counsel?</p> <p>22 <b>A. I did that yesterday, as well as 23 this morning.</b></p> <p>24 Q. How long did you spend with counsel?</p> <p>25 <b>A. Yesterday approximately I'd say two</b></p>	<p style="text-align: right;">13</p> <p>1 Q. When did you obtain those degrees?</p> <p>2 <b>A. I graduated undergraduate 1973 and 3 Master's degree in '74.</b></p> <p>4 Q. And what did you do after obtaining 5 your Master's degree?</p> <p>6 <b>A. Went to work for Wonder Bread &amp; 7 Hostess Cake, a division of ITT, International 8 Telephone Telegraph.</b></p> <p>9 Q. And what did you do there?</p> <p>10 <b>A. I was a -- started as an assistant 11 personnel manager.</b></p> <p>12 Q. How long were you there?</p> <p>13 <b>A. I was there for 10 years.</b></p> <p>14 Q. Where did you go after Hostess?</p> <p>15 <b>A. From Hostess I went to work for a 16 privately held restaurant chain called Papa 17 Gino's of America.</b></p> <p>18 Q. What did you do for them?</p> <p>19 <b>A. I started in the personnel function 20 and transitioned to the purchasing function.</b></p> <p>21 Q. And when did that transition occur?</p> <p>22 <b>A. About two years into my stay with 23 them.</b></p> <p>24 Q. And how long were you with Papa 25 Gino's?</p>

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<p style="text-align: right;">14</p> <p>1       <b>A. I believe a total of nine years.</b>  2       Q. And what types of items did you  3 purchase for Papa Gino's?  4       <b>A. I purchased tomato paste for pizza,</b>  5 <b>mozzarella cheese, fresh vegetables, flour, some</b>  6 <b>pasta items.</b>  7       Q. What did you do next?  8       <b>A. Papa Gino's of America was sold and</b>  9 <b>I left to join the firm of Boston Chicken.</b>  10       Q. That would have been approximately  11 1993?  12       <b>A. Yeah. That would be close enough,</b>  13 <b>yeah.</b>  14       Q. And what did you do for Boston  15 Chicken?  16       <b>A. I was in charge of their purchasing</b>  17 <b>department.</b>  18       Q. And in that role, what were your  19 responsibilities?  20       <b>A. Primarily purchase of poultry, along</b>  21 <b>with some starches and fresh vegetables.</b>  22       Q. Any eggs?  23       <b>A. No.</b>  24       Q. How long were you in that position?  25       <b>A. I was there only one year.</b></p>	<p style="text-align: right;">16</p> <p>1       <b>vegetables, fresh vegetables, dairy products.</b>  2       Q. Did you purchase eggs?  3       <b>A. Yes, we did.</b>  4       Q. Do you recall who you purchased eggs  5 from?  6       <b>A. I do not.</b>  7       Q. Were you responsible at Friendly for  8 the purchase of eggs?  9       <b>A. The person that purchased them</b>  10 <b>reported to me, so ultimately, yes, I was</b>  11 <b>responsible.</b>  12       Q. And I take it you started at Nestlé  13 in 2008?  14       <b>A. That is correct.</b>  15       Q. What was your position when you  16 started?  17       <b>A. I started as a group manager of</b>  18 <b>ingredients, raw.</b>  19       Q. And how long did you hold that  20 position?  21       <b>A. I continue to hold that position</b>  22 <b>presently.</b>  23       Q. And what are the ingredients within  24 the group manager ingredients title?  25       <b>A. I am responsible for the proteins,</b></p>
<p style="text-align: right;">15</p> <p>1       Q. What next?  2       <b>A. That firm was sold and I went with</b>  3 <b>the president of that organization on a</b>  4 <b>consulting assignment in Latrobe, Pennsylvania</b>  5 <b>for a firm called Italian Oven and spent about</b>  6 <b>nine months there setting up a purchasing</b>  7 <b>department for them.</b>  8       Q. And after that?  9       <b>A. I became a meat buyer for a firm</b>  10 <b>entitled Jack Pack Foods in Manchester, New</b>  11 <b>Hampshire, and I stayed there until 1995.</b>  12       Q. What then?  13       <b>A. I went to work for Friendly Ice</b>  14 <b>Cream Corporation, and I was there for 13 years.</b>  15 <b>Friendly Ice Cream.</b>  16       Q. That would take us through 2008?  17       <b>A. 2008, that's correct.</b>  18       Q. And what did you do at Friendly Ice  19 Cream?  20       <b>A. I started as a senior buyer and</b>  21 <b>progressed to vice president of procurement and</b>  22 <b>an officer of the company.</b>  23       Q. What types of items did you purchase  24 on behalf of Friendly?  25       <b>A. We bought meats, poultry, frozen</b></p>	<p style="text-align: right;">17</p> <p>1       <b>which include the purchase of beef, pork, veal,</b>  2 <b>chicken, turkey, shellfish, finfish, frozen</b>  3 <b>vegetables, frozen potatoes and eggs.</b>  4       Q. Who do you report to?  5       <b>A. Mr. Michael Whitcombe,</b>  6 <b>W-H-I-T-C-O-M-B-E.</b>  7       Q. What's his title?  8       <b>A. Head of purchasing ingredients.</b>  9       Q. And who does Mr. Whitcombe report  10 to?  11       <b>A. Mr. Kevin Petrie, P-E-T-R-I-E.</b>  12       Q. What's his title?  13       <b>A. He is chief purchasing officer for</b>  14 <b>NUSA, I believe.</b>  15       Q. Of what?  16       <b>A. Of NUSA.</b>  17       Q. And is that Nestlé USA?  18       <b>A. Nestlé USA.</b>  19       <b>And I must say there's a number of</b>  20 <b>terms. He could be chief purchasing officer.</b>  21 <b>NAP was his -- North American Purchasing. Don't</b>  22 <b>hold me to those.</b>  23       Q. There was an individual identified  24 in yesterday's deposition, Mr. Steve Warner.  25 Is he still with Nestlé?</p>

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<p style="text-align: right;">18</p> <p>1       <b>A. Yes, he is.</b>  2       Q. And what's his role?  3       <b>A. Mr. Warner is head of purchasing,</b>  4       <b>business partners.</b>  5       Q. So is he on the same level of  6       Mr. Whitcombe --  7       <b>A. That is correct.</b>  8       Q. -- one being ingredients and one  9       being business partners?  10       <b>A. Yes.</b>  11       Q. What's the distinction?  12       <b>A. Mr. Whitcombe is responsible for the</b>  13       <b>teams under him that do strategic purchasing.</b>  14       <b>Mr. Warner is responsible for the teams who are</b>  15       <b>the conduit between procurement and the</b>  16       <b>businesses that we purchase for.</b>  17       Q. Are there other group managers that  18       are responsible for eggs other than yourself?  19       <b>A. No, there are not.</b>  20       I would like to just add to that  21       that we did a realignment of responsibilities,  22       and approximately three months ago eggs were  23       transitioned to another group. So there is a  24       group manager now responsible for eggs for the  25       last three months.</p>	<p style="text-align: right;">20</p> <p>1       <b>miscellaneous buyer of vegetables.</b>  2       Q. Anyone else when you started as  3       group purchasing manager that reported to you  4       who was involved in the purchase of eggs?  5       <b>A. No, sir.</b>  6       Q. And from 2008 to present, could you  7       identify those individuals who reported to you  8       who did have a responsibility that included  9       eggs?  10       <b>A. Subsequent to Mr. Trask, a Mr. Mark</b>  11       <b>Majoras, M-A-J-O-R-A-S. Keith Reardon,</b>  12       <b>R-E-A-R-D-O-N.</b>  13       Q. Did Mr. Reardon replace Mr. Majoras?  14       <b>A. Yes, he did, for the responsibility</b>  15       <b>of eggs, but not entirely.</b>  16       Q. Understood.  17       And what were the dates that  18       Mr. Majoras was involved in eggs?  19       <b>A. I'm going to say 2008 to a short</b>  20       <b>period of 2009.</b>  21       Q. Okay. What about Mr. Reardon?  22       <b>A. I may have missed somebody. I want</b>  23       <b>to think about these dates.</b>  24       So Majoris, Trask, D'Angelo, and now  25       transferred over to Kulkarni, I believe.</p>
<p style="text-align: right;">19</p> <p>1       Q. And who is that?  2       <b>A. Prashant, P-R-A-S-H-A-N-T.</b>  3       <b>Kulkarni, K-U-L-K-A-R-I [sic].</b>  4       Q. And that's another group manager  5       responsible for eggs?  6       <b>A. That's correct.</b>  7       Q. Are you no longer responsible for  8       eggs?  9       <b>A. I am no longer responsible.</b>  10       Q. What was the reason for that  11       restructure?  12       <b>A. Cross -- cross-pollination and</b>  13       <b>training of different groups.</b>  14       Q. So let's go back when you started at  15       Nestlé, group purchasing manager.  16       Who reported to you?  17       <b>A. Well, I started as a group manager.</b>  18       Q. I apologize. So when you started as  19       group -- purchasing manager, who reported to  20       you?  21       <b>A. I had William Trask who was a</b>  22       <b>sourcing specialist, Ken Kostal, K-O-S-T-A-L,</b>  23       <b>purchasing manager, poultry; Dale Bohman,</b>  24       <b>B-O-H-M-A-N, purchasing manager, meat, pork and</b>  25       <b>veal; and Pat Zappone, Z-A-P-P-O-N-E. Pat was a</b></p>	<p style="text-align: right;">21</p> <p>1       Q. Okay. So Majoris predated  2       Bill Trask?  3       <b>A. Yeah, I believe so.</b>  4       Q. And D'Angelo followed?  5       <b>A. Yeah. I'm a little foggy on how the</b>  6       <b>dating there worked, but I believe that's</b>  7       <b>correct. Majoris, Trask, D'Angelo, Kulkarni.</b>  8       Q. Anyone else report to you?  9       <b>A. No. And you have Reardon in there,</b>  10       <b>too, right?</b>  11       Q. What about Ed Lewis?  12       <b>A. Ed Lewis was the individual who I</b>  13       <b>was hired to replace. He was retiring, so he</b>  14       <b>was a group manager.</b>  15       Q. Was there a time when you were both  16       at the company?  17       <b>A. That's correct.</b>  18       Q. And did you have dual roles?  19       <b>A. Yeah. We both held the same title.</b>  20       <b>He was on more or less special projects. I was</b>  21       <b>on group manager responsibilities.</b>  22       Q. And when did Mr. Lewis leave?  23       <b>A. December of 2008, I think he</b>  24       <b>retired.</b>  25       Q. Do you know when Mr. Lewis started</p>

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<p style="text-align: right;">22</p> <p>1 at Nestlé?</p> <p>2 <b>A. I do not.</b></p> <p>3 Q. Do you know anyone at the company</p> <p>4 who has had any role in eggs that's still at the</p> <p>5 company that predated your arrival?</p> <p>6 <b>A. Define "role."</b></p> <p>7 Q. Involved in any aspect of the</p> <p>8 purchase of eggs.</p> <p>9 <b>A. No. I think I've covered everybody.</b></p> <p>10 Q. How about John Hill?</p> <p>11 <b>A. John Hill was a head of purchasing</b></p> <p>12 <b>for the Dreyer's Ice Cream.</b></p> <p>13 Q. Does Dreyer's Ice Cream purchase</p> <p>14 eggs?</p> <p>15 <b>A. They do not. We -- Nestlé Business</b></p> <p>16 <b>Services purchased eggs for Dreyer's Ice Cream.</b></p> <p>17 Q. Say that again.</p> <p>18 <b>A. Nestlé Business Services, NBS, which</b></p> <p>19 <b>is now NAP, North American Procurement, we're</b></p> <p>20 <b>the central purchasing arm and we purchase</b></p> <p>21 <b>strategically the eggs for Dreyer's.</b></p> <p>22 Q. Was Mr. Hill involved in decisions</p> <p>23 as to which vendor would supply the eggs?</p> <p>24 <b>A. No, he didn't -- was not involved in</b></p> <p>25 <b>which vendor. Mr. Hill, as we do with all</b></p>	<p style="text-align: right;">24</p> <p>1 <b>A. Nestlé Business Services was an arm</b></p> <p>2 <b>of the Nestlé organization whose charter was to</b></p> <p>3 <b>consolidate purchases throughout the systems of</b></p> <p>4 <b>Nestlé USA in order to maintain standards of</b></p> <p>5 <b>quality and food safety and leverage purchasing</b></p> <p>6 <b>opportunities where strategically feasible.</b></p> <p>7 Q. What do you mean by leverage</p> <p>8 purchase opportunities when feasible?</p> <p>9 <b>A. Many of the plants utilize the same</b></p> <p>10 <b>materials for their recipes. It was our role</b></p> <p>11 <b>to -- and is our role to consolidate those</b></p> <p>12 <b>purchases.</b></p> <p>13 Q. Why is that a benefit to Nestlé?</p> <p>14 <b>A. One is it controls who we are</b></p> <p>15 <b>purchasing from to be sure that only approved</b></p> <p>16 <b>suppliers are utilized for the safety of the</b></p> <p>17 <b>consumer and the quality of our materials.</b></p> <p>18 <b>Also, by buying in larger quantities</b></p> <p>19 <b>under one contract, we're in a position to more</b></p> <p>20 <b>successfully negotiate lower prices.</b></p> <p>21 Q. And has that occurred, that you've</p> <p>22 been able to negotiate lower prices because of</p> <p>23 volume?</p> <p>24 <b>A. That is correct.</b></p> <p>25 Q. Is that true also in the context of</p>
<p style="text-align: right;">23</p> <p>1 <b>businesses, was the person who we reviewed our</b></p> <p>2 <b>strategy with and the various options associated</b></p> <p>3 <b>with the purchase of eggs.</b></p> <p>4 Q. So he would be familiar with the</p> <p>5 reasoning why one egg vendor would be utilized</p> <p>6 versus another vendor, correct?</p> <p>7 <b>A. Not so much. It was really about</b></p> <p>8 <b>cost.</b></p> <p>9 Q. Did Mr. Hill at Dreyer's have any</p> <p>10 preferences for a particular type of egg that</p> <p>11 was unique or different than other parts of</p> <p>12 Nestlé?</p> <p>13 <b>A. Mr. Hill would not have a</b></p> <p>14 <b>preference.</b></p> <p>15 Q. You mentioned the names Nestlé</p> <p>16 Business Services and -- was it North American</p> <p>17 Procurement?</p> <p>18 <b>A. North American Procurement, correct.</b></p> <p>19 Q. When did that change occur?</p> <p>20 <b>A. And that's about one year ago we</b></p> <p>21 <b>changed the name of the organization.</b></p> <p>22 Q. Any change in functionality?</p> <p>23 <b>A. No change in functionality.</b></p> <p>24 Q. Could you describe Nestlé Business</p> <p>25 Services?</p>	<p style="text-align: right;">25</p> <p>1 eggs?</p> <p>2 <b>A. In the context of all the things we</b></p> <p>3 <b>purchase.</b></p> <p>4 Q. Since 2008 forward, what portion of</p> <p>5 your time has consisted of purchasing eggs as</p> <p>6 distinguished from the other items that you're</p> <p>7 responsible for?</p> <p>8 <b>A. Probably 10 percent or less.</b></p> <p>9 Q. Has that changed since you've been</p> <p>10 at Nestlé?</p> <p>11 <b>A. Only when they took away the egg</b></p> <p>12 <b>responsibility, it became zero.</b></p> <p>13 Q. So when I use the term "Nestlé</p> <p>14 Business Services," I'll be also referring to</p> <p>15 North American Procurement, as I understand the</p> <p>16 functionality hasn't changed.</p> <p>17 <b>A. I understand.</b></p> <p>18 Q. So what types of items does Nestlé</p> <p>19 Business Services purchase for Nestlé?</p> <p>20 <b>A. Anything that can be strategically</b></p> <p>21 <b>procured. So we're not -- we're talking about</b></p> <p>22 <b>items that are purchased by more than one</b></p> <p>23 <b>location in a relatively substantial amount,</b></p> <p>24 <b>which can be everything from travel services to</b></p> <p>25 <b>capital equipment, office supplies, health and</b></p>

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<p style="text-align: right;">26</p> <p>1 life and medical benefits, along with all the</p> <p>2 raw materials, functional ingredients.</p> <p>3 Q. You mentioned it's an arm of Nestlé.</p> <p>4 What do you mean by that?</p> <p>5 A. I'm not intimate with the entire</p> <p>6 reporting relationship. Nestlé Business</p> <p>7 Services did not report into one specific</p> <p>8 business. We were connected to NUSA by a way</p> <p>9 that I'm not familiar with.</p> <p>10 Q. Who do you understand your employer</p> <p>11 to be?</p> <p>12 A. Nestlé USA. It's what's on my</p> <p>13 check.</p> <p>14 Q. So when you mentioned that Nestlé</p> <p>15 Business Services purchases on behalf of Nestlé,</p> <p>16 does that include all corporate affiliates of</p> <p>17 Nestlé USA?</p> <p>18 A. It does not.</p> <p>19 Q. What would be an example of</p> <p>20 affiliates of Nestlé USA that NBS does not</p> <p>21 purchase for?</p> <p>22 A. I think there may be some health</p> <p>23 materials that NBS is not purchasing. Other</p> <p>24 than that, we have -- we touch all the other</p> <p>25 divisions.</p>	<p style="text-align: right;">28</p> <p>1 A. My understanding, as I've seen the</p> <p>2 categories of them, they're unique, they're</p> <p>3 different than what I'm buying, they're very</p> <p>4 small quantities, and they're best purchased</p> <p>5 locally by that group, so they wouldn't be</p> <p>6 considered strategic.</p> <p>7 Q. What makes you say they're unique?</p> <p>8 A. I didn't recognize some of the</p> <p>9 descriptions. I've not delved into it deeply,</p> <p>10 but I think there's -- some requirements are</p> <p>11 different than what I have.</p> <p>12 Q. What do you mean by "requirements"?</p> <p>13 A. There may be some change in the way</p> <p>14 the component comes to that factory specifically</p> <p>15 for what the use is versus what I buy.</p> <p>16 Q. Do you have a sense of the volume of</p> <p>17 eggs that are purchased related to confection?</p> <p>18 A. I saw the numbers once in my career</p> <p>19 here and it's extremely low. It doesn't fit</p> <p>20 into anywhere in the other \$24 million worth of</p> <p>21 purchases I do or did.</p> <p>22 Q. And the 24 million, is that of eggs?</p> <p>23 A. That was of eggs.</p> <p>24 Q. Would you say less than a million?</p> <p>25 A. Oh, yeah, it was less than a million</p>
<p style="text-align: right;">27</p> <p>1 Q. And in connection with eggs, is that</p> <p>2 the case?</p> <p>3 A. That's correct.</p> <p>4 And the exception on eggs would be</p> <p>5 Purina. I do not procure for them.</p> <p>6 Q. And is that solely related to the</p> <p>7 inedible egg?</p> <p>8 A. That's correct.</p> <p>9 And confections buys a small amount</p> <p>10 of eggs that I don't handle because they're not</p> <p>11 strategic for us. They're unique to them.</p> <p>12 Q. Who's responsible for those?</p> <p>13 A. I do not know.</p> <p>14 Q. Do you know what egg products those</p> <p>15 are?</p> <p>16 A. I don't know that either.</p> <p>17 Q. Do you know who the vendor is for</p> <p>18 those eggs?</p> <p>19 A. I do not.</p> <p>20 Q. Who at Nestlé is involved with the</p> <p>21 purchase of those eggs?</p> <p>22 A. I would say the group manager,</p> <p>23 Carol Klein.</p> <p>24 Q. And why, again, are those</p> <p>25 confection-related eggs outside of your group?</p>	<p style="text-align: right;">29</p> <p>1 dollars. And that's the best of my</p> <p>2 recollection.</p> <p>3 Q. Was there a specific location that</p> <p>4 those eggs were delivered to for confection?</p> <p>5 A. I do not know where they went to.</p> <p>6 Q. Do you know if those were custom</p> <p>7 created eggs for confection?</p> <p>8 A. They could have very well been.</p> <p>9 And when you say "confection," mark</p> <p>10 that confection/nutrition. It's that same</p> <p>11 group. It could have been going to either of</p> <p>12 them.</p> <p>13 Q. And what would nutrition use for</p> <p>14 eggs?</p> <p>15 A. They -- previously we owned a</p> <p>16 company called Power Bar. I believe that's been</p> <p>17 spun off recently. And they could have been</p> <p>18 using them in that Power Bar formulation.</p> <p>19 Q. And confection would just generally</p> <p>20 be candy?</p> <p>21 A. Yeah, it could be sweets and candy,</p> <p>22 you're correct.</p> <p>23 Q. What sweets and candy uses eggs?</p> <p>24 A. I don't know. I've never worked for</p> <p>25 that division. I've never seen the formulas.</p>

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<p style="text-align: right;">30</p> <p>1 Q. Are all the egg buyers in NBS 2 located in Solon? 3 <b>A. Not presently. The buyer now is 4 located in Glendale, California.</b> 5 Q. This is as of three months ago? 6 <b>A. That's correct.</b> 7 Q. But before then, were all egg buyers 8 located here? 9 <b>A. With the exception of nutrition and 10 confections, yes.</b> 11 Q. And where was nutrition and 12 confection located? 13 <b>A. I don't know where those buyers 14 were. It's a virtual organization, so people 15 don't necessarily work out of their office.</b> 16 Q. I want to try to understand how NBS 17 would work with the various divisions at Nestlé 18 for the purchase of eggs. 19 Would they tell you what eggs they 20 needed? 21 <b>A. Yes, they would.</b> 22 Q. They would prepare the spec? 23 <b>A. Yes, they would.</b> 24 Q. And the spec can become fairly 25 technical, can it not?</p>	<p style="text-align: right;">32</p> <p>1 eggs? 2 <b>A. I've never seen a Kellogg 3 specification. I can't comment on that.</b> 4 Q. Is it possible? 5 MR. CAMPBELL: Objection as to form. 6 You may answer if I object, yeah. 7 THE WITNESS: I can? 8 MR. CAMPBELL: You can. 9 THE WITNESS: Okay. Anything is 10 possible. 11 BY MR. BOETTGE: 12 Q. Who was involved at Nestlé in 13 preparing the technical specifications? 14 <b>A. It would be a joint activity of the 15 technical applications group known as TAG, 16 T-A-G, and the specification writing group, or 17 specification authors.</b> 18 Q. And that's true in connection with 19 eggs? 20 <b>A. That is correct.</b> 21 Q. Is the technical applications group 22 within NBS? 23 <b>A. No, it is not.</b> 24 Q. What group are they in? 25 <b>A. They are a part of the businesses</b></p>
<p style="text-align: right;">31</p> <p>1 <b>A. It is very much so.</b> 2 <b>And if I might, the technical 3 complexity is hinged upon whether it is a 4 proprietary product for us versus a commodity 5 item.</b> 6 Q. Could you distinguish, tell me what 7 you mean by the differences between -- 8 <b>A. A commodity item would be something 9 indistinguishable in nature that everybody buys, 10 everybody uses and it's only formulated one way.</b> 11 <b>Proprietary or custom is something 12 that we designate certain changes to be made of 13 value-added processing or other ingredients to 14 be included.</b> 15 Q. And were there examples of that in 16 connection with egg purchases? 17 <b>A. There were not for NBS or NAP.</b> 18 Q. All eggs that Nestlé purchased were 19 commodity eggs? 20 <b>A. That's correct.</b> 21 Q. Apart from your comment that they're 22 commodity eggs, is it fair to assume that the 23 technical specification that Nestlé had for eggs 24 may have varied from, as an example, the 25 technical specification Kellogg may have for</p>	<p style="text-align: right;">33</p> <p>1 <b>that they develop for.</b> 2 Q. What about the specification writing 3 group, who are they with? 4 <b>A. The specification writing group is a 5 joint service, not a part of NBS, but they 6 service all the businesses.</b> 7 Q. So let's now talk briefly about the 8 businesses at Nestlé that purchase eggs. 9 Can you list those for me? 10 <b>A. Nestlé Prepared Foods, which is the 11 frozen meals. There is eggs purchased for the 12 Hot Pockets business, Toll House Cookie, 13 Buitoni, the ice cream, Dreyer's.</b> 14 Q. Häagen-Dazs as well? 15 <b>A. That's -- Häagen-Dazs, I believe, is 16 a licensed item that we make, so I buy the eggs. 17 I don't know what they go into necessarily by 18 brand. I just know they go to the ice cream 19 division.</b> 20 Q. Is Häagen-Dazs in the ice cream 21 division? 22 <b>A. Yes. It's manufactured by them.</b> 23 Q. What else? 24 <b>A. Joseph's Pasta. They are no longer 25 a part of our business. They've been sold</b></p>

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<p style="text-align: right;">34</p> <p>1 <b>recently. I think that's it. I think I've</b>  2 <b>covered the businesses.</b>  3 Q. Are you familiar with the term  4 "shelf life"?  5 <b>A. Yes, I am.</b>  6 Q. And is that something that someone  7 from the division would advise NBS they would  8 need for their egg?  9 <b>A. That's correct. And that would</b>  10 <b>come -- be on the specification.</b>  11 Q. Do the folks in the technical  12 applications group have technical training?  13 <b>A. I don't -- I've never seen their</b>  14 <b>resumés or their -- I can't answer</b>  15 <b>affirmatively, no.</b>  16 Q. You don't know one way or the other?  17 <b>A. I do not know.</b>  18 Q. How does NBS know which vendors to  19 buy egg from?  20 <b>A. We utilize a bidding process that is</b>  21 <b>extended to only approved vendors. On occasion</b>  22 <b>we will allow unapproved vendors to participate,</b>  23 <b>but they know full well going in that they will</b>  24 <b>not be given any volume until such time as</b>  25 <b>they're approved.</b></p>	<p style="text-align: right;">36</p> <p>1 individual.  2 Does that suggest that the various  3 divisions we talked about are responsible for  4 approving a vendor or --  5 <b>A. Not the divisions. So that we have</b>  6 <b>a central audit group who goes and inspects the</b>  7 <b>factory that we seek to get approved and they</b>  8 <b>would send their approval or rejection. Same</b>  9 <b>thing with the TAG group, analyzing the</b>  10 <b>consistency of the materials. But it's not by</b>  11 <b>business; it's by function.</b>  12 Q. When you say "function," what do you  13 mean?  14 <b>A. Quality, safety, food safety, vendor</b>  15 <b>improvement team, central audit, financial for</b>  16 <b>financial status and stability.</b>  17 Q. What's the vendor improvement team?  18 <b>A. We have learned over time some best</b>  19 <b>practices that are good for Nestlé and good for</b>  20 <b>the industry, and we will share those best</b>  21 <b>practices with our suppliers.</b>  22 Q. Okay. Can you give me examples in  23 the context of eggs where that's occurred?  24 <b>A. I don't have any regarding eggs that</b>  25 <b>I'm aware of.</b></p>
<p style="text-align: right;">35</p> <p>1 Q. How does an egg vendor become  2 approved?  3 <b>A. There's an on-boarding process</b>  4 <b>through the years. It's changed and evolved,</b>  5 <b>but the on-boarding process is about securing</b>  6 <b>certificates of insurance, understanding their</b>  7 <b>financial wherewithal. Are they properly</b>  8 <b>capitalized? Does their physical plant meet</b>  9 <b>Nestlé's standards? Do their materials pass</b>  10 <b>microbiological examination? Does their factory</b>  11 <b>have a HAP ASA Plan, has an analysis and</b>  12 <b>critical control points? Do they have a proper</b>  13 <b>hold and recall process in place, and can they</b>  14 <b>meet our specification for the material</b>  15 <b>consistently?</b>  16 Q. Who at Nestlé is responsible for  17 determining whether a vendor is approved or not  18 approved?  19 <b>A. It's a result of all these</b>  20 <b>departments sending in and approving their</b>  21 <b>individual pieces, and then procurement</b>  22 <b>excellence group consolidates it and shows them</b>  23 <b>on a spreadsheet as being an approved vendor or</b>  24 <b>not approved vendor.</b>  25 Q. You mentioned departments sending in</p>	<p style="text-align: right;">37</p> <p>1 Q. Mr. Feyman, I'm going to be showing  2 you from time to time today documents that we  3 marked yesterday as deposition exhibits in the  4 deposition of William Trask, so I'll be  5 referring to the exhibit number that we used in  6 that deposition.  7 <b>A. I understand.</b>  8 Q. The first document I'll show you  9 which fits that description is what we  10 identified as Trask Exhibit 6.  11 Do you recognize this document?  12 <b>A. Yes, I do.</b>  13 MR. CAMPBELL: I'm sorry, Doug, what  14 was it?  15 BY MR. BOETTGE:  16 Q. And what is this document?  17 MR. CAMPBELL: What was it?  18 MR. BOETTGE: This is Trask  19 Exhibit 6.  20 MR. CAMPBELL: Okay.  21 BY MR. BOETTGE:  22 Q. And what does this document purport  23 to be?  24 <b>A. A supplier strategy of some type.</b>  25 Q. Who prepared it?</p>

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<p style="text-align: right;">38</p> <p>1 <b>A. I do not know.</b></p> <p>2 Q. Is this the type of document that's</p> <p>3 prepared on a regular basis?</p> <p>4 <b>A. I've never seen one of these before</b></p> <p>5 <b>and we do not and have not prepared them since</b></p> <p>6 <b>during my tenure.</b></p> <p>7 Q. When you say you've never seen one</p> <p>8 of these before --</p> <p>9 <b>A. Before today.</b></p> <p>10 Q. But you recognize the document?</p> <p>11 <b>A. I recognize it because I saw it this</b></p> <p>12 <b>morning.</b></p> <p>13 Q. But before this morning, you never</p> <p>14 saw it?</p> <p>15 <b>A. Never saw it, sir.</b></p> <p>16 Q. I'd focus your attention on the</p> <p>17 column identified as Strategy. And you see</p> <p>18 there are a list of descriptions?</p> <p>19 <b>A. Yes, I do.</b></p> <p>20 Q. Are you familiar with those</p> <p>21 descriptions: Core, T3, T2?</p> <p>22 <b>A. I do not know any of those. I have</b></p> <p>23 <b>never seen those before this morning, and I do</b></p> <p>24 <b>not use them in my work today.</b></p> <p>25 Q. I want to turn your attention to the</p>	<p style="text-align: right;">40</p> <p>1 "preferred vendor list"?</p> <p>2 <b>A. I'm familiar with preferred vendor.</b></p> <p>3 <b>I'm not familiar with preferred vendor list. I</b></p> <p>4 <b>have not seen one before.</b></p> <p>5 Q. What is a preferred vendor?</p> <p>6 <b>A. It would be a term used to describe</b></p> <p>7 <b>a long-term vendor who's served us well who's</b></p> <p>8 <b>priced competitively that we may feel</b></p> <p>9 <b>comfortable doing more business or recommending</b></p> <p>10 <b>to use in other areas.</b></p> <p>11 Q. Is there any other documents at</p> <p>12 Nestlé that identify those vendors that are</p> <p>13 preferred vendors versus those that are not?</p> <p>14 <b>A. I do not know. I have not seen one.</b></p> <p>15 Q. How does Nestlé keep track who's the</p> <p>16 preferred vendor or not?</p> <p>17 <b>A. I think it's anecdotal at best from</b></p> <p>18 <b>the specific subject matter, experts who are the</b></p> <p>19 <b>buyers.</b></p> <p>20 Q. And who would those experts be for</p> <p>21 eggs?</p> <p>22 <b>A. For eggs, it would have been all</b></p> <p>23 <b>those people responsible we listed earlier.</b></p> <p>24 Q. What are the factors that Nestlé</p> <p>25 considers or analyzes when it purchases or</p>
<p style="text-align: right;">39</p> <p>1 fourth page, and there's a description of what a</p> <p>2 core supplier is.</p> <p>3 Do you see that?</p> <p>4 <b>A. Yes, I do.</b></p> <p>5 Q. And there's identification that</p> <p>6 "These suppliers are those who support</p> <p>7 Dreyer's."</p> <p>8 Do you see that?</p> <p>9 <b>A. Okay. (Reading out of the hearing</b></p> <p>10 <b>of the reporter.) I do see that, yes.</b></p> <p>11 Q. Does this suggest to you that this</p> <p>12 is a document that's specific to Dreyer's</p> <p>13 vendors?</p> <p>14 <b>A. I -- I do not know.</b></p> <p>15 Q. Yes. Are you aware of the various</p> <p>16 divisions characterizing the vendors that supply</p> <p>17 their eggs?</p> <p>18 <b>A. No, I am not.</b></p> <p>19 Q. You'll see at the bottom of the</p> <p>20 document that identifies a name of the document</p> <p>21 and the Bates number. There's a reference to</p> <p>22 this being a preferred vendor list, 8-27-2007.</p> <p>23 Do you see that?</p> <p>24 <b>A. Yes, I do.</b></p> <p>25 Q. Are you familiar with the term</p>	<p style="text-align: right;">41</p> <p>1 solicits bids for eggs?</p> <p>2 <b>A. Well, first of all, they must be an</b></p> <p>3 <b>approved vendor. They must be able to meet the</b></p> <p>4 <b>specifications. They must be a factory that's</b></p> <p>5 <b>in good standing, if they're USDA inspected.</b></p> <p>6 <b>They must manufacture the products in food safe</b></p> <p>7 <b>and employee safe environments, and they must be</b></p> <p>8 <b>competitively priced to allow us to compete in</b></p> <p>9 <b>the marketplace.</b></p> <p>10 Q. Would you agree that quality, the</p> <p>11 quality of eggs, is particularly important for a</p> <p>12 food manufacturer?</p> <p>13 <b>A. It's extremely important.</b></p> <p>14 Q. I want to show you what's been</p> <p>15 previously marked as Trask Exhibit 7. This is</p> <p>16 an e-mail; the top e-mail is from Ned Rokke to</p> <p>17 yourself and Bill Trask.</p> <p>18 Do you see that?</p> <p>19 <b>A. Yes, I see that.</b></p> <p>20 Q. I turn your attention to the second</p> <p>21 page of the e-mail. There's a comment that "egg</p> <p>22 products have a high potential for</p> <p>23 microbiological contamination."</p> <p>24 Do you see that?</p> <p>25 <b>A. Yes, I do. Top -- the first</b></p>

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12 (Pages 42 to 45)

<p style="text-align: right;">42</p> <p>1 sentence you're speaking of?</p> <p>2 Q. Yeah.</p> <p>3 A. Yes.</p> <p>4 Q. And do you agree with that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And there's a reference to</p> <p>7 microstandards.</p> <p>8 What are microstandards?</p> <p>9 A. They are the counts or presence of</p> <p>10 certain bacteria or pathogens which we establish</p> <p>11 limits on our specification for the products we</p> <p>12 buy.</p> <p>13 Q. And who establishes those limits?</p> <p>14 Who --</p> <p>15 A. The technical applications group in</p> <p>16 conjunction with the quality management team.</p> <p>17 Q. And there's a comment about Nestlé's</p> <p>18 exacting microstandards.</p> <p>19 What does "exacting standard" mean?</p> <p>20 A. In the way I -- I don't know</p> <p>21 how -- what was meant by the person who wrote</p> <p>22 this, but in today's world, we are unwavering.</p> <p>23 It must meet the standard or exceed the</p> <p>24 standard, and it cannot be received or used if</p> <p>25 it does not, and we give them specific numbers</p>	<p style="text-align: right;">44</p> <p>1 A. Yes, it is.</p> <p>2 Q. And why is that?</p> <p>3 A. We only have a certain amount of</p> <p>4 docks to receive from. If all the trucks show</p> <p>5 up at one time, we'd be able unable to get them</p> <p>6 unloaded in an organized manner to get them</p> <p>7 received.</p> <p>8 Q. Are you aware of any factors in</p> <p>9 connection with eggs that differentiate a</p> <p>10 producer's egg products from another producer's?</p> <p>11 A. I am not aware of any factors on the</p> <p>12 egg specification. I consider them a commodity.</p> <p>13 Q. How about the taste or texture of</p> <p>14 eggs? Is that any consideration that Nestlé has</p> <p>15 used in choosing one egg supplier versus</p> <p>16 another?</p> <p>17 A. Only in one case, which is where the</p> <p>18 eggs are purchased fully cooked for inclusion in</p> <p>19 our meal assembly, and that's the scrambled egg</p> <p>20 mix.</p> <p>21 Q. And who makes that product?</p> <p>22 A. It's been purchased from Cargill</p> <p>23 Kitchens for a number of years.</p> <p>24 Q. Anyone else?</p> <p>25 A. Other people make it, yes.</p>
<p style="text-align: right;">43</p> <p>1 that must be met.</p> <p>2 Q. Would you agree that Nestlé's</p> <p>3 standards are such that not every manufacture</p> <p>4 can meet them?</p> <p>5 A. Yes, I agree with that statement.</p> <p>6 Q. Have there been instances when</p> <p>7 Nestlé has determined that an egg producer does</p> <p>8 not meet Nestlé's exacting standards?</p> <p>9 A. I'm not aware of any egg producer</p> <p>10 being excluded.</p> <p>11 Q. What factors does Nestlé consider</p> <p>12 that you haven't touched on already when</p> <p>13 choosing egg product suppliers?</p> <p>14 A. Well, I think we've really covered</p> <p>15 the major ones.</p> <p>16 Q. How about reliability, is that</p> <p>17 important?</p> <p>18 A. Service is tracked, yes.</p> <p>19 Q. What do you mean by "service is</p> <p>20 tracked"?</p> <p>21 A. The time of arrival, is it the</p> <p>22 quantity we ordered, does it arrive within a</p> <p>23 certain window of time that it makes its</p> <p>24 receiving appointment for.</p> <p>25 Q. Is that important to Nestlé?</p>	<p style="text-align: right;">45</p> <p>1 Q. Has Nestlé purchased that product</p> <p>2 from anyone other than Cargill?</p> <p>3 A. We have not. We've sampled it from</p> <p>4 others but are not satisfied with the material.</p> <p>5 Q. Does Nestlé market the products it</p> <p>6 makes using egg products as being superior in</p> <p>7 quality?</p> <p>8 A. I don't believe so.</p> <p>9 Q. Nestlé doesn't attempt to</p> <p>10 distinguish to a consumer, as an example, that</p> <p>11 its Dreyer's Ice Cream is of a higher quality</p> <p>12 than other ice cream manufactured by different</p> <p>13 manufacturers?</p> <p>14 A. I'm not intimate enough with the</p> <p>15 Dreyer's marketing strategy. I have never given</p> <p>16 them any information to support something being</p> <p>17 better than something else, so I don't -- I</p> <p>18 can't answer that.</p> <p>19 Q. Back to Trask Exhibit 7 that's in</p> <p>20 front of you, also on the top of the second</p> <p>21 page, there's a comment, "Secondly, egg proteins</p> <p>22 can vary greatly in" -- I'm going to try to</p> <p>23 pronounce this -- "organoleptic quality. Poor</p> <p>24 ones can be sulfurous."</p> <p>25 What does that mean?</p>

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<p style="text-align: right;">46</p> <p>1 <b>A. I do not know.</b></p> <p>2 Q. Are you aware of egg proteins</p> <p>3 becoming sulfurous?</p> <p>4 <b>A. I am not.</b></p> <p>5 Q. There's a comment on the first page</p> <p>6 about being a certified supplier status. This</p> <p>7 is in the e-mail from Betsy Jones.</p> <p>8 <b>A. About where on it?</b></p> <p>9 Q. Sure.</p> <p>10 This is in the third sentence of the</p> <p>11 e-mail from Miss Jones to Mr. Hahn and</p> <p>12 Mr. Rokke.</p> <p>13 <b>A. That would be in reference to being</b></p> <p>14 <b>an approved vendor.</b></p> <p>15 Q. And is that your understanding,</p> <p>16 what's listed here, that a certified supplier</p> <p>17 means that Nestlé tests their incoming</p> <p>18 ingredients on an audit basis?</p> <p>19 <b>A. I'm going to say conditionally yes,</b></p> <p>20 <b>because this correspondence was written</b></p> <p>21 <b>October 24th, 2008. I started August 28th, I</b></p> <p>22 <b>think, of 2008. And the terms have changed over</b></p> <p>23 <b>the years. I believe certified supplier is now</b></p> <p>24 <b>an approved -- on the approved vendor list, a</b></p> <p>25 <b>vendor approval list.</b></p>	<p style="text-align: right;">48</p> <p>1 <b>determine what caused the shortcoming of the</b></p> <p>2 <b>quality of the offering.</b></p> <p>3 Q. Can you think of any examples where</p> <p>4 that's occurred?</p> <p>5 <b>A. Oh, it happens all the time.</b></p> <p>6 <b>Everything is tested for texture and taste, and</b></p> <p>7 <b>it takes place on proteins, tough chicken, mushy</b></p> <p>8 <b>chicken.</b></p> <p>9 Q. And that's true with respect to eggs</p> <p>10 as well, correct?</p> <p>11 <b>A. I can't say yes to that with the</b></p> <p>12 <b>exception of the IQF, scrambled eggs. These are</b></p> <p>13 <b>a component that are mixed in. I'm not</b></p> <p>14 <b>technically astute enough to know what they</b></p> <p>15 <b>could or could not do to ruin the meal, but --</b></p> <p>16 Q. Is the spectrum of egg products that</p> <p>17 a vendor is able to sell also important to</p> <p>18 Nestlé?</p> <p>19 <b>A. Yes, it is.</b></p> <p>20 Q. How so?</p> <p>21 <b>A. If a vendor were to present itself</b></p> <p>22 <b>as an approved vendor, a low-cost producer or a</b></p> <p>23 <b>competitive cost-producer, it's always</b></p> <p>24 <b>advantageous to put as much weight on the</b></p> <p>25 <b>trucks. So if I can buy three components, get</b></p>
<p style="text-align: right;">47</p> <p>1 <b>So I'm not sure what some of these</b></p> <p>2 <b>things might have meant back then. I was too</b></p> <p>3 <b>new.</b></p> <p>4 Q. Would you agree that if a vendor had</p> <p>5 issues with quality, they could fall off the</p> <p>6 approved vendor list?</p> <p>7 <b>A. That is correct.</b></p> <p>8 Q. And then there's a comment at the</p> <p>9 top from Mr. Rokke, "Bill/Steve, note comments</p> <p>10 from R&amp;D relative to our conversation."</p> <p>11 Do you see that?</p> <p>12 <b>A. Yes, I do.</b></p> <p>13 Q. And do you recall the conversation?</p> <p>14 <b>A. I do not.</b></p> <p>15 Q. Is this an example of an instance in</p> <p>16 which R&amp;D would be germane to purchasing</p> <p>17 decisions at Nestlé?</p> <p>18 <b>A. It could be, yes.</b></p> <p>19 Q. What are the circumstances in which</p> <p>20 egg purchasing at Nestlé becomes involved with</p> <p>21 R&amp;D?</p> <p>22 <b>A. If the materials received and</b></p> <p>23 <b>utilized in manufacturing did not yield the</b></p> <p>24 <b>appropriate taste, check, texture, color,</b></p> <p>25 <b>flavor, an investigation would be conducted to</b></p>	<p style="text-align: right;">49</p> <p>1 <b>40,000 pounds on a truck, I'm going to have a</b></p> <p>2 <b>lower freight rate than if I'm only buying one</b></p> <p>3 <b>component from them and the truck has only got</b></p> <p>4 <b>20,000 pounds on it. The rest of it is empty.</b></p> <p>5 <b>I'm paying for the truck, and the disbursement</b></p> <p>6 <b>of those freight costs become more expensable to</b></p> <p>7 <b>20,000 pounds than 40.</b></p> <p>8 Q. Any other reason that's important,</p> <p>9 that a particular vendor may sell different egg</p> <p>10 products?</p> <p>11 <b>A. It also puts us in an ensure supply</b></p> <p>12 <b>position that's favorable to our strategies.</b></p> <p>13 Q. What do you mean by that?</p> <p>14 <b>A. The more approved vendors you have</b></p> <p>15 <b>supplying the myriad of items, the better your</b></p> <p>16 <b>opportunity should a plant burn down, get</b></p> <p>17 <b>flooded, blow up, labor action, governmental</b></p> <p>18 <b>intervention. It gives me some options.</b></p> <p>19 Q. Is it also a consideration for</p> <p>20 Nestlé the number and location of plants that an</p> <p>21 egg producer may have?</p> <p>22 <b>A. Location, yes.</b></p> <p>23 Q. Why is that important?</p> <p>24 <b>A. Lower freight if it's closer to our</b></p> <p>25 <b>production facility where we receive the goods.</b></p>

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<p style="text-align: right;">50</p> <p>1 Q. Any other reasons?</p> <p>2 A. Well, with the number, if a producer</p> <p>3 of any materials for Nestlé has more than one</p> <p>4 location manufacturing the same thing, that's</p> <p>5 part of an ensure supply strategy. If one of</p> <p>6 their plants goes down, I can buy it from</p> <p>7 another approved company that knows how to work</p> <p>8 with us and give us our goods.</p> <p>9 Q. When you say "knows how to work with</p> <p>10 us," what do you mean by that?</p> <p>11 A. Well, understands our standards of</p> <p>12 operation, our requirements for quality,</p> <p>13 microbiological, the standards for the factory,</p> <p>14 the factory has been inspected. And since every</p> <p>15 piece of equipment and every component up to the</p> <p>16 pH of water affects things that are</p> <p>17 manufactured. Changing location to reach</p> <p>18 acquires sometimes adjustments of formulation of</p> <p>19 what people may provide to me.</p> <p>20 So if they know what the standard</p> <p>21 is, then they can produce it in another factory</p> <p>22 under slightly different circumstances and still</p> <p>23 meet my standards.</p> <p>24 Q. Are you familiar with a document</p> <p>25 prepared by Nestlé that evaluates vendors on a</p>	<p style="text-align: right;">52</p> <p>1 disbursed it to the employees for research.</p> <p>2 Q. What did you tell them?</p> <p>3 A. Supply any and all documents</p> <p>4 pertaining to this request. Do not destroy</p> <p>5 anything. Do not erase anything. And do it by</p> <p>6 the timeline that they were requested to do it.</p> <p>7 Q. What was the team that you had</p> <p>8 provided that direction?</p> <p>9 A. At the time -- let's see. This was</p> <p>10 about two years ago that I think this thing</p> <p>11 started and requests may have come in. So I'd</p> <p>12 say at that time it was Keith Reardon and</p> <p>13 Pauline Morawski, M-O-R-A-W-S-K-I.</p> <p>14 Q. Anyone else?</p> <p>15 A. I think that was it. There may have</p> <p>16 been some requests by them to other people to</p> <p>17 write some queries to get data, and I think that</p> <p>18 we had to pull some materials from some off-site</p> <p>19 storage, maybe Iron Mountain, so other people</p> <p>20 were involved in those requests, but the key</p> <p>21 gatherers were those two people.</p> <p>22 Q. And can you describe again Keith's</p> <p>23 role?</p> <p>24 A. Keith was a sourcing specialist</p> <p>25 supporting the protein buyers.</p>
<p style="text-align: right;">51</p> <p>1 quadrant basis?</p> <p>2 A. I know of one that I'm intimate</p> <p>3 with, yes.</p> <p>4 Q. Could you describe that?</p> <p>5 A. I believe you're talking about a</p> <p>6 document that feeds off of our seven step</p> <p>7 strategic strategy process where we rank all of</p> <p>8 our vendors on numerous criteria that then feed</p> <p>9 into a spreadsheet that becomes a bubble chart</p> <p>10 consisting of four quadrants and assigns a</p> <p>11 status to each vendor based on the quadrant they</p> <p>12 fall.</p> <p>13 Q. Do you know if any of those</p> <p>14 documents were produced in this litigation?</p> <p>15 A. I do not. I don't recall seeing any</p> <p>16 or supplying any.</p> <p>17 Q. Were you involved in gathering</p> <p>18 documents?</p> <p>19 A. Yes, I was.</p> <p>20 Q. What steps did you take to gather</p> <p>21 documents?</p> <p>22 A. I utilized my team who had some</p> <p>23 involvement at one time or another that was</p> <p>24 still with me to comply with the requests that</p> <p>25 were sent over. So I was the lead and I</p>	<p style="text-align: right;">53</p> <p>1 Q. Did he replace Mr. Trask?</p> <p>2 A. No, you can't -- no. We changed our</p> <p>3 structure, so Trask was in a different sourcing</p> <p>4 specialist role. That role doesn't exist, as</p> <p>5 Mr. Trask held it, anymore. But he did replace</p> <p>6 Trask from a standpoint of a developmental</p> <p>7 position where we give people a category to</p> <p>8 manage.</p> <p>9 In the case of Trask, he was given</p> <p>10 it because of an illness of an employee, to</p> <p>11 manage eggs. In the case of Reardon, he was</p> <p>12 given it to see how he would do as a strategic</p> <p>13 buyer.</p> <p>14 Q. When did Mr. Reardon start at</p> <p>15 Nestlé?</p> <p>16 A. At Nestlé, I do not know. He was</p> <p>17 with the firm about five years, I believe.</p> <p>18 Q. When did he start as a sourcing</p> <p>19 specialist and have a role with eggs?</p> <p>20 A. I cannot remember the exact time.</p> <p>21 Q. Would it have been after Trask?</p> <p>22 A. Yes, it was absolutely after Trask.</p> <p>23 Q. So it would have been sometime in</p> <p>24 2010 or so?</p> <p>25 A. Yeah. It would have to be in that</p>

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<p style="text-align: right;">54</p> <p>1 area.</p> <p>2 Q. What about Pauline Morawski?</p> <p>3 A. Morawski.</p> <p>4 Q. Morawski.</p> <p>5 A. Pauline has been an administrative</p> <p>6 support person for, I think eight years now</p> <p>7 within the procurement function.</p> <p>8 Q. What's an administrative support</p> <p>9 person?</p> <p>10 A. They assist in any and all needs of</p> <p>11 the buyers, from arranging calls to assisting</p> <p>12 with correspondence to following up on any and</p> <p>13 all outstanding matters that they're asked to do</p> <p>14 so. Calculating prices, issuing purchase</p> <p>15 orders.</p> <p>16 Q. The document that you mentioned</p> <p>17 that --</p> <p>18 A. Bubble chart.</p> <p>19 Q. The bubble chart. Does that have a</p> <p>20 name?</p> <p>21 A. Yeah, I think it does. I don't</p> <p>22 recall. Segmentation.</p> <p>23 Q. How often is that document prepared?</p> <p>24 A. Could be once a year, it could be</p> <p>25 every five years, depending on anything that</p>	<p style="text-align: right;">56</p> <p>1 Q. What was her role with eggs?</p> <p>2 A. She was the egg buyer for about two</p> <p>3 years.</p> <p>4 Q. Who did she replace?</p> <p>5 A. She replaced Reardon.</p> <p>6 Q. Where did Reardon go?</p> <p>7 A. Reardon left the firm.</p> <p>8 Q. You mentioned there are four</p> <p>9 assigned strategic areas on the bubble chart?</p> <p>10 A. Yeah. There's four quadrants.</p> <p>11 Q. Do you know what those quadrants</p> <p>12 are?</p> <p>13 A. One of -- the names have changed a</p> <p>14 couple of times, so I could be incorrect. I'm</p> <p>15 going to say critical, bottleneck, strategic and</p> <p>16 maybe routine.</p> <p>17 Q. And you would rank a vendor related</p> <p>18 to each of those categories?</p> <p>19 A. It's a -- no. We would not rank the</p> <p>20 vendor to those categories. That spreadsheet</p> <p>21 would -- will rank the vendor from the</p> <p>22 standpoint of financial stability, all these</p> <p>23 different factors, flows through some type of</p> <p>24 formula that then puts the bubble based on size</p> <p>25 of purchases from them. The more we buy from</p>
<p style="text-align: right;">55</p> <p>1 changes in the category.</p> <p>2 Q. And you mentioned category. Would</p> <p>3 eggs be a --</p> <p>4 A. Eggs would be a category.</p> <p>5 Q. So there would be a separate</p> <p>6 segmentation prepared for eggs?</p> <p>7 A. If there was one. I can't say that</p> <p>8 there is one then. I'm not even exactly sure if</p> <p>9 there is one now. It's a \$24 million purchase.</p> <p>10 I have \$600 million plus. That's a small piece,</p> <p>11 not really a high visibility category from that</p> <p>12 standpoint, so I don't think there is one.</p> <p>13 Q. Who would you ask to find out if, in</p> <p>14 fact, such a document exists?</p> <p>15 A. Probably ask Ann D'Angelo who was</p> <p>16 the last full-time buyer prior to transferring</p> <p>17 these out of my department.</p> <p>18 Q. Andy?</p> <p>19 A. Ann, A-N-N. D'Angelo, D,</p> <p>20 apostrophe, A-N-G-E-L-O.</p> <p>21 Q. She worked for you?</p> <p>22 A. She works for me.</p> <p>23 Q. And she had a responsibility with</p> <p>24 eggs?</p> <p>25 A. Yes, she did.</p>	<p style="text-align: right;">57</p> <p>1 them, the bigger the bubble, and it places them</p> <p>2 in those quadrants.</p> <p>3 Q. In addition to financial stability,</p> <p>4 what are the other factors?</p> <p>5 A. I just -- I'm just not intimate</p> <p>6 enough with it to remember them.</p> <p>7 Q. So other than size of purchases,</p> <p>8 what other factors go into whether an egg vendor</p> <p>9 or any vendor here would be critical,</p> <p>10 bottleneck, strategic or routine?</p> <p>11 A. I think that quality, experience</p> <p>12 with them is in there, too.</p> <p>13 Q. What else?</p> <p>14 A. Reliability. They get some input</p> <p>15 from the factories. Are they on time.</p> <p>16 Q. Anything else?</p> <p>17 A. That's all I can recall.</p> <p>18 Q. Would you look at whether other</p> <p>19 producers manufacture a certain product?</p> <p>20 A. Yeah, that comes into that. That</p> <p>21 kind of puts them into a bottleneck situation.</p> <p>22 So there's got to be some things that feed to</p> <p>23 that. Is it -- might be a question in there</p> <p>24 about ensure supply. Is it single source or</p> <p>25 multiple source.</p>

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<p style="text-align: right;">58</p> <p>1 Q. What about strategic? What factors 2 into strategic?</p> <p>3 <b>A. Well, those factors I just gave you 4 would apply to all of them, and it spits it out 5 into those quadrants, so I can't say what is 6 weighted more than others.</b></p> <p>7 Q. So would you agree that these 8 factors that we've talked about over the last 9 few moments, quality, reliability, spectrum of 10 purchases -- or spectrum of products, et cetera, 11 are factors other than price that Nestlé 12 considers when choosing to purchase a particular 13 egg product?</p> <p>14 <b>A. Those factors are definitely 15 considered and there's probably many more, but 16 didn't -- they don't come to my immediate 17 memory.</b></p> <p>18 Q. And you're aware, correct, that 19 Nestlé has filed a suit against a number of 20 entities, including United Egg Producers and a 21 number of egg producers?</p> <p>22 <b>A. Yes, I am.</b></p> <p>23 Q. What's your understanding of the 24 allegations in the lawsuit?</p> <p>25 MR. CAMPBELL: I object and instruct</p>	<p style="text-align: right;">60</p> <p>1 <b>deposed today in case I don't come home, you 2 know.</b></p> <p>3 <b>So I've told a number of people that 4 there's a lawsuit that I'm involved in.</b></p> <p>5 Q. And your boss --</p> <p>6 <b>A. Mr. Whitcombe.</b></p> <p>7 Q. What did you tell him about the 8 lawsuit?</p> <p>9 <b>A. Just that I would be tied up on 10 Wednesday and Friday. I mean, we've also 11 discussed on a number of occasions that there 12 was a lawsuit that we're seeking recovery for 13 damages.</b></p> <p>14 Q. What else did you discuss with 15 Mr. Whitcombe about the lawsuit?</p> <p>16 <b>A. That would probably be that. That 17 would probably be the extent of it.</b></p> <p>18 Q. Did you discuss with Mr. Whitcombe 19 any of the allegations in the lawsuit?</p> <p>20 <b>A. No, I don't think I actually got 21 into the details. I think that I told him it 22 was related to controlling prices and that was 23 self-explanatory.</b></p> <p>24 Q. Did you talk to anyone at Nestlé 25 about the lawsuit before the lawsuit was filed?</p>
<p style="text-align: right;">59</p> <p>1 the witness not to answer on the ground that to 2 the extent his knowledge is gained from me in 3 privileged conversations, it is immune from 4 discovery.</p> <p>5 However, if he has any knowledge 6 outside of those conversations with me or the 7 legal department in Nestlé, then he may answer. 8 BY MR. BOETTGE:</p> <p>9 Q. And that's fair.</p> <p>10 <b>A. Okay.</b></p> <p>11 Q. With that caveat, what's your 12 understanding of the allegations in the lawsuit?</p> <p>13 <b>A. That the egg producers controlled 14 output, thus controlling and managing prices to 15 be higher than what they probably should have 16 been.</b></p> <p>17 Q. Have you talked to anyone at Nestlé 18 other than counsel about the lawsuit?</p> <p>19 <b>A. To the degree of the people that did 20 the research, I told them what they were 21 researching for. And then my boss, of course. 22 And anytime I was tied up on these -- the 23 depositions, preparation for depositions, 24 materials. I mean, I think that -- I couldn't 25 remember who I told. I told my wife I was being</b></p>	<p style="text-align: right;">61</p> <p>1 <b>A. I don't believe so. I think the 2 first knowledge was when I saw something in the 3 press.</b></p> <p>4 Q. You saw something in the press that 5 Nestlé had filed the lawsuit?</p> <p>6 <b>A. No. That there was a class action 7 suit of some type.</b></p> <p>8 Q. Did you talk to anyone at Nestlé 9 about Nestlé filing its own complaint?</p> <p>10 <b>A. I've talked to counsel. That's it.</b></p> <p>11 MR. BOETTGE: You know, why don't we 12 do this? Why don't we take a short break. 13 We've been at it for a little while.</p> <p>14 THE VIDEOGRAPHER: Off the record. 15 The time is 9:17.</p> <p>16 (Recess taken.)</p> <p>17 THE VIDEOGRAPHER: We're back on the 18 record. The time is 9:26.</p> <p>19 MR. BOETTGE: Mark this as Feyman 20 Exhibit 2.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">62</p> <p>1                   - - - - -</p> <p>2                   (Thereupon, Deposition Exhibit 2,</p> <p>3                   Second Amended Complaint, was marked</p> <p>4                   for purposes of identification.)</p> <p>5                   - - - - -</p> <p>6       BY MR. BOETTGE:</p> <p>7           Q.   Showing you, Mr. Feyman, what I've</p> <p>8           marked as Exhibit 2. It is the second amended</p> <p>9           complaint that Nestlé has brought against</p> <p>10          defendants in this matter. Let's take a look</p> <p>11          at -- and for the record, it's the redacted copy</p> <p>12          that I'm using as an exhibit.</p> <p>13                Let's take a look at paragraph 17 on</p> <p>14          page 10. I just want to get some understanding</p> <p>15          here of the definition of Nestlé.</p> <p>16           A.   <b>I just got to get that open.</b></p> <p>17                <b>Okay. Paragraph 17.</b></p> <p>18           Q.   And there's a reference of Nestlé</p> <p>19          Prepared Foods Company.</p> <p>20                Do you see that?</p> <p>21           A.   <b>Yes, I do.</b></p> <p>22           Q.   And what is Nestlé Prepared Foods</p> <p>23          Company?</p> <p>24           A.   <b>That is DiGiorno Pizza, Hot Pockets,</b></p> <p>25          <b>Stouffer's, Lean Cuisine. Like I said, prepared</b></p>	<p style="text-align: right;">64</p> <p>1           <b>A. Not to my knowledge.</b></p> <p>2           Q.   So again, clarifying today, when I</p> <p>3           refer to eggs, I'll be referring to egg</p> <p>4           products, correct?</p> <p>5           A.   <b>I understand.</b></p> <p>6           Q.   Is that fair?</p> <p>7                Let's look at in Exhibit 2, the</p> <p>8           paragraph 105.</p> <p>9                MR. CAMPBELL: Page 46.</p> <p>10          MR. BOETTGE: Thank you.</p> <p>11          THE WITNESS: Okay.</p> <p>12       BY MR. BOETTGE:</p> <p>13           Q.   Do you see there is a chart at the</p> <p>14          bottom of page 46 going to page 47?</p> <p>15           A.   <b>Yes.</b></p> <p>16           Q.   And it identifies the top 20 egg</p> <p>17          producers who owned approximately 55 percent of</p> <p>18          laying hens.</p> <p>19                Do you see that?</p> <p>20           A.   <b>I see that chart.</b></p> <p>21           Q.   Which of these 20 producers have</p> <p>22          made proposals to supply Nestlé with egg</p> <p>23          products?</p> <p>24           A.   <b>To my knowledge and tenure, Rose</b></p> <p>25          <b>Acres, Rembrandt, Sparboe, Michael's Foods,</b></p>
<p style="text-align: right;">63</p> <p>1       <b>foods company.</b></p> <p>2           Q.   Is Nestlé Prepared Foods Company a</p> <p>3          separate corporate entity than Nestlé USA?</p> <p>4           A.   <b>I don't believe so. It's just a</b></p> <p>5          <b>part of Nestlé USA.</b></p> <p>6           Q.   And what is Nestlé Dreyer's Ice</p> <p>7          Cream Company?</p> <p>8           A.   <b>A part of Nestlé USA.</b></p> <p>9           Q.   Again, is it a separate entity?</p> <p>10          A.   <b>I don't know.</b></p> <p>11          Q.   Are you aware of any Nestlé related</p> <p>12          entities that have assigned their claims in this</p> <p>13          lawsuit to Nestlé USA?</p> <p>14          A.   <b>I am not.</b></p> <p>15          Q.   Did any Nestlé -- and for the</p> <p>16          purposes of today's deposition, when I say</p> <p>17          "Nestlé," I'll be referring to Nestlé as broad</p> <p>18          as possible to include all divisions,</p> <p>19          affiliates, entities that are underneath the</p> <p>20          Nestlé umbrella.</p> <p>21                Is that fair?</p> <p>22          A.   <b>Yes.</b></p> <p>23          Q.   Did any Nestlé subsidiaries,</p> <p>24          affiliates, divisions, purchase shell eggs since</p> <p>25          1999?</p>	<p style="text-align: right;">65</p> <p>1       <b>Cal-Maine. That would be it.</b></p> <p>2           MR. BESMAN: Can I ask a clarifying</p> <p>3          question?</p> <p>4           MR. BOETTGE: Sure.</p> <p>5           MR. BESMAN: When you refer to</p> <p>6          Nestlé -- again, I know you defined it -- are</p> <p>7          you referring to Nestlé USA and its U.S.</p> <p>8          affiliates or Nestlé in the entire world?</p> <p>9           MR. BOETTGE: I'm referring to who's</p> <p>10          been identified in the complaint, I believe, is</p> <p>11          Nestlé USA, Inc.</p> <p>12          MR. BESMAN: Okay. Sorry. Thank</p> <p>13          you.</p> <p>14       BY MR. BOETTGE:</p> <p>15           Q.   Which of those 20 producers did</p> <p>16          Nestlé purchase egg products from?</p> <p>17           A.   <b>Rose Acre, Rembrandt, Michael Foods.</b></p> <p>18           Q.   What's your understanding or when do</p> <p>19          you recall Cal-Maine --</p> <p>20                MR. CAMPBELL: Doug, just a minute.</p> <p>21          He's not through looking at this.</p> <p>22                MR. BOETTGE: Oh, I'm sorry.</p> <p>23          THE WITNESS: I'm all set.</p> <p>24                MR. CAMPBELL: Okay.</p> <p>25       BY MR. BOETTGE:</p>

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<p style="text-align: right;">66</p> <p>1 Q. When do you recall Cal-Maine 2 proposing to supply Nestlé with egg products? 3 <b>A. That would be before my time, but I 4 saw the name in the records.</b> 5 Q. What records? 6 <b>A. The things that were pulled together 7 that showed some volume purchases when the 8 materials were put together.</b> 9 Q. But your understanding is Cal-Maine 10 did not -- 11 <b>A. I do not know either way. Just saw 12 the name.</b> 13 Q. Can you describe for me again what 14 you were looking at when you say "volume 15 purchases"? 16 <b>A. It appeared that there was some 17 spend against that company's name, to my 18 recollection. But I did not buy them or sign 19 for them.</b> 20 Q. Did you ask anyone at the company as 21 to whether Nestlé had ever purchased egg 22 products from Cal-Maine? 23 <b>A. I did not.</b> 24 Q. Was this a spreadsheet you were 25 looking at?</p>	<p style="text-align: right;">68</p> <p>1 <b>A. I've only heard that name mentioned 2 from the past when I took over, but I have no 3 firsthand knowledge of them selling to us.</b> 4 Q. Do you have any firsthand knowledge 5 or any knowledge that, in fact, Sparboe had 6 proposed to supply Nestlé with eggs? 7 <b>A. I do not.</b> 8 Q. You do not know either way? 9 <b>A. That's correct.</b> 10 Q. You just heard their name 11 referenced? 12 <b>A. Correct.</b> 13 Q. Was Sparboe on this document that 14 you mentioned earlier? 15 <b>A. No, I don't recall seeing them.</b> 16 Q. Do you recall the dates of this 17 extract, how far back it went? 18 <b>A. It would have been inclusive of the 19 dates requested by the exhibit materials, so 20 whatever was asked of me, that's what we put in 21 for a parameter.</b> 22 Q. Did you have any communications with 23 any -- or did anyone at Nestlé have any 24 communications with any of the producers that 25 are listed in this chart that you're aware of?</p>
<p style="text-align: right;">67</p> <p>1 <b>A. It was an extract of spend that went 2 back into the history and it was quite a while 3 ago.</b> 4 Q. Was it an extract from SAP? 5 <b>A. I think so, yes.</b> 6 Q. Did you ask someone to prepare that 7 extract for you? 8 <b>A. That extract would have been asked 9 for as part of the documents requested.</b> 10 Q. Do you know that extract was 11 supplied? 12 <b>A. I do not. I can only assume yes.</b> 13 Q. And what was the query that created 14 the extract? 15 <b>A. Just -- it would have been spend on 16 the egg category.</b> 17 Q. Did you see any volume associated 18 with that? 19 <b>A. I didn't see any volume, no.</b> 20 Q. You see zero volume? 21 <b>A. There was no volume that I recall. 22 I just saw a dollar figure.</b> 23 Q. What about Sparboe? What's your 24 understanding that Sparboe had proposed to 25 supply Nestlé with eggs?</p>	<p style="text-align: right;">69</p> <p>1 <b>A. Any communication?</b> 2 Q. Correct. Apart from Michael Foods, 3 Rembrandt and Rose Acre. 4 Are you familiar with any 5 communications anyone at Nestlé had with anyone 6 from those companies? 7 <b>A. I am not. Apart from those people?</b> 8 Q. Correct. 9 <b>A. Excluding those people?</b> 10 Q. Excluding Michael Foods, Rembrandt, 11 Rose Acre? 12 <b>A. Yep. I am not.</b> 13 Q. Apart from Rose Acre, Rembrandt and 14 Michael Foods, do you think any of the other 17 15 companies listed in the chart are viable 16 candidates to supply Nestlé with egg products? 17 <b>A. I do not know.</b> 18 Q. You don't know one way or the other? 19 <b>A. Correct.</b> 20 Q. For which Nestlé products or brands 21 did Nestlé purchase egg products from 22 Michael Foods? 23 <b>A. Prepared Foods, Joseph's Pasta, Toll 24 House Cookies. I believe that would be it.</b> 25 Q. Dreyer's?</p>

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<p style="text-align: right;">70</p> <p>1       <b>A. I don't believe we used Michael's</b>  2       <b>for Dreyer's.</b>  3       Q. Did Nestlé require Michael Foods to  4       provide any of its egg products to be UEP  5       certified egg products?  6       <b>A. Yes, we did.</b>  7       Q. Which ones?  8       <b>A. All of them over time.</b>  9       Q. So Nestlé has required Michael Foods  10       to supply the eggs that it used for prepared  11       foods to be UEP certified eggs?  12       <b>A. That's correct.</b>  13       Q. When did that happen?  14       <b>A. It was not at one single point. It</b>  15       <b>was progressively over time.</b>  16       Q. What about with respect to the  17       prepared foods?  18       <b>A. Probably 2007 it started.</b>  19       Q. It's your testimony that Nestlé  20       demanded Michael Foods to provide UEP certified  21       eggs for the eggs that were used in the prepared  22       foods group?  23       <b>A. Yes.</b>  24       Q. What about Joe's Pasta?  25       <b>A. Joseph's? Yes, as well.</b></p>	<p style="text-align: right;">72</p> <p>1       Q. Did you do anything in preparation  2       for this deposition to educate yourself as to  3       the eggs that -- or whether the eggs that Nestlé  4       purchased from Michael Foods were UEP certified?  5       <b>A. I did not.</b>  6       Q. What do you base your understanding  7       that Nestlé in 2007 demanded that the eggs that  8       Michael Foods used to supply Toll House be UEP  9       certified?  10       <b>A. Ask that question again.</b>  11       Q. Sure.  12       I'm saying, what's the basis of your  13       knowledge that in 2007, or starting in 2007,  14       Nestlé began requiring that the eggs  15       Michael Foods supplied for Toll House would be  16       UEP certified?  17       <b>A. The orientation and cross</b>  18       <b>information I received from Ed Lewis, taking</b>  19       <b>over for him, there was discussion that this was</b>  20       <b>an ongoing trend.</b>  21       Q. What did Mr. Lewis tell you?  22       <b>A. The marketing groups were anxious to</b>  23       <b>be sure that the animal welfare considerations</b>  24       <b>were given to where we buy eggs from.</b>  25       Q. And who were the marketing groups?</p>
<p style="text-align: right;">71</p> <p>1       Q. And when do you recall Nestlé  2       demanding that Michael Foods supply Nestlé with  3       UEP certified eggs to be used in the Joseph's  4       Pasta product?  5       <b>A. Subsequent to 2008, but I don't</b>  6       <b>remember an exact date.</b>  7       Q. Was there a time prior to 2008 when  8       Michael Foods was supplying egg to Nestlé for  9       Joseph's Pasta that was not UEP certified?  10       <b>A. I do not know.</b>  11       Q. Who would know?  12       <b>A. The buyer at Joseph's Pasta.</b>  13       Q. Do you have any information that  14       would suggest that Michael Foods did not  15       provide -- or any information to suggest that  16       Michael Foods -- one way or the other, whether  17       Michael Foods provided certified egg to -- or  18       non-certified egg to Joseph's Pasta before 2008?  19       <b>A. I do not.</b>  20       Q. How about Toll House? When did  21       Nestlé demand that the eggs that Michael Foods  22       supplied for Toll House be UEP certified?  23       <b>A. I would say starting someplace</b>  24       <b>around 2007 was a request, but I don't know when</b>  25       <b>the demand date was set.</b></p>	<p style="text-align: right;">73</p> <p>1       <b>A. I wouldn't know their names back</b>  2       <b>then. They're -- we have a brand marketing</b>  3       <b>group for every brand.</b>  4       Q. Okay. So this would have been --  5       <b>A. So one of those --</b>  6       Q. This would have been a requirement  7       coming from each specific brand's marketing  8       group?  9       <b>A. It could have been from one, could</b>  10       <b>have been from all of them. I do not know.</b>  11       Q. Have you had any discussions at any  12       time with any of the marketing groups in  13       connection with animal welfare?  14       <b>A. Yes, I have.</b>  15       Q. Could you describe those  16       discussions?  17       <b>A. We've had discussions about the law</b>  18       <b>that started in California concerning cage-free</b>  19       <b>birds and the effect it's going to have on egg</b>  20       <b>supply.</b>  21       Q. Any other discussions that you've  22       had?  23       <b>A. That would pretty much be it. That</b>  24       <b>was a major one.</b>  25       Q. Did you have any discussions with</p>

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<p style="text-align: right;">74</p> <p>1 anyone with respect to UEP certified?</p> <p>2 <b>A. Only my buyers and to ensure that we</b></p> <p>3 <b>require UEP certified.</b></p> <p>4 Q. Was this a requirement that was</p> <p>5 included in the spec?</p> <p>6 <b>A. I don't believe so.</b></p> <p>7 Q. It was separate from the spec,</p> <p>8 but --</p> <p>9 <b>A. I believe so.</b></p> <p>10 Q. -- nevertheless a requirement?</p> <p>11 <b>A. Right.</b></p> <p>12 Q. Mr. Feyman, I'm showing you a</p> <p>13 document that we've marked Feyman Exhibit 3.</p> <p>14 - - - - -</p> <p>15 (Thereupon, Deposition Exhibit 3,</p> <p>16 Memo to John Hill from Tom Diercks,</p> <p>17 dated 9-14-06, Bates Labeled</p> <p>18 MFI0109021, was marked for purposes</p> <p>19 of identification.)</p> <p>20 - - - - -</p> <p>21 Q. It's a document produced by</p> <p>22 Michael Foods from a Tom Diercks addressed to</p> <p>23 John Hill and Jacki Pecek.</p> <p>24 Do you see that?</p> <p>25 <b>A. Yes, I do.</b></p>	<p style="text-align: right;">76</p> <p>1 MR. BOETTGE: Mark this Trask -- I'm</p> <p>2 sorry, Feyman 4. This one.</p> <p>3 - - - - -</p> <p>4 (Thereupon, Deposition Exhibit 4,</p> <p>5 E-Mail Chain, Bates Labeled</p> <p>6 MFI0032735-0032737, was marked for</p> <p>7 purposes of identification.)</p> <p>8 - - - - -</p> <p>9 BY MR. BOETTGE:</p> <p>10 Q. Showing you, Mr. Feyman, what's been</p> <p>11 marked as Feyman Exhibit 4. It's an e-mail</p> <p>12 produced by Michael Foods. You'll see the top</p> <p>13 portion on the first page has been redacted. I</p> <p>14 provided an unredacted copy to your counsel, and</p> <p>15 we'll represent that the redacted portion</p> <p>16 relates only to internal correspondence at</p> <p>17 Michael Foods.</p> <p>18 You'll see at the bottom of page 1</p> <p>19 there's an e-mail from a John Hill.</p> <p>20 Do you see that?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. To Tom Diercks and copying</p> <p>23 Jacki Pecek.</p> <p>24 Do you see that?</p> <p>25 <b>A. Yes.</b></p>
<p style="text-align: right;">75</p> <p>1 Q. And I think you mentioned John Hill</p> <p>2 is specific to Dreyer's?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And what's his role at Dreyer's?</p> <p>5 <b>A. His role was head of purchasing.</b></p> <p>6 Q. What's his role now?</p> <p>7 <b>A. He is retired.</b></p> <p>8 Q. When did he retire?</p> <p>9 <b>A. I'm not sure of the exact date.</b></p> <p>10 Q. How about Jacki Pecek?</p> <p>11 <b>A. She is retired.</b></p> <p>12 Q. When did she retire?</p> <p>13 <b>A. Approximately two years ago.</b></p> <p>14 Q. Have you seen this document before?</p> <p>15 <b>A. I do not recall.</b></p> <p>16 Q. There's a reference in the second</p> <p>17 paragraph with respect to certified sugar yoke,</p> <p>18 a notation that Michael Foods could "provide</p> <p>19 Laurel, Fort Wayne and Houston UEP certified</p> <p>20 eggs effective October 15, 2006."</p> <p>21 Do you see that?</p> <p>22 <b>A. Yes, I do.</b></p> <p>23 Q. And were Laurel, Fort Wayne and</p> <p>24 Houston plants that produced Dreyer's ice cream?</p> <p>25 <b>A. Yes, they were.</b></p>	<p style="text-align: right;">77</p> <p>1 Q. And the e-mail begins, "Thanks for</p> <p>2 taking time to discuss animal welfare concerns."</p> <p>3 Do you know what those concerns were</p> <p>4 that Mr. Hill is referring to?</p> <p>5 <b>A. I do not.</b></p> <p>6 Q. Do you see at the bottom of the</p> <p>7 second page there's an e-mail from Tom Diercks</p> <p>8 dated September 14th in which he attaches a</p> <p>9 letter?</p> <p>10 Do you see that?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. In which he notes the letter</p> <p>13 explains options for UEP certified eggs.</p> <p>14 Do you see that?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And then what we've marked as Feyman</p> <p>17 Exhibit 3 is a letter that explains options for</p> <p>18 UEP certified eggs.</p> <p>19 Do you see that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Any reason to doubt that Feyman</p> <p>22 Exhibit 3 is something other than the letter</p> <p>23 that Mr. Diercks e-mailed to Mr. Hill and</p> <p>24 Miss Pecek?</p> <p>25 <b>A. I have no way of knowing.</b></p>

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21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1 Q. Is that a fair inference?</p> <p>2 <b>A. I just -- I have no way to know. It</b></p> <p>3 <b>predates my tenure.</b></p> <p>4 Q. The bottom e-mail on the first page</p> <p>5 of Feyman Exhibit 4 has a reference to details</p> <p>6 provided as to the cost implications of changing</p> <p>7 specifications.</p> <p>8 Do you see that from Mr. Hill?</p> <p>9 <b>A. Yes, I do.</b></p> <p>10 Q. What do you understand are the cost</p> <p>11 implications of changing specifications from</p> <p>12 non-UEP to UEP?</p> <p>13 <b>A. Either the price would go up or go</b></p> <p>14 <b>down.</b></p> <p>15 Q. Do you know whether the price goes</p> <p>16 up if UEP certified is demanded?</p> <p>17 <b>A. The price typically goes up, yes.</b></p> <p>18 Q. And those are discussions that you</p> <p>19 have with the vendor?</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. So you have an understanding that</p> <p>22 demanding UEP certified egg will result in</p> <p>23 Nestlé having to pay a higher price for those</p> <p>24 eggs, correct?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">80</p> <p>1 certified egg in 2006?</p> <p>2 <b>A. I can't talk about something that I</b></p> <p>3 <b>wasn't even here for. I don't know, no.</b></p> <p>4 Q. You don't know either way?</p> <p>5 <b>A. Don't know either way.</b></p> <p>6 Q. Are there any documents at Nestlé</p> <p>7 that would indicate when it began purchasing UEP</p> <p>8 certified egg from Michael Foods and for which</p> <p>9 divisions?</p> <p>10 <b>A. Not that I'm aware of.</b></p> <p>11 Q. And who would you talk to at Nestlé</p> <p>12 today that would give you any information as to</p> <p>13 when Nestlé began purchasing certified eggs from</p> <p>14 Michael Foods?</p> <p>15 <b>A. For which division?</b></p> <p>16 Q. For Nestlé. I mean, for Dreyer's.</p> <p>17 <b>A. For Dreyer's? Monte Mace.</b></p> <p>18 Q. Monte Mace is still with Nestlé?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And you believe Monte Mace would</p> <p>21 have information as to when Dreyer's -- or when</p> <p>22 or if Dreyer's began purchasing certified egg</p> <p>23 from Michael Foods?</p> <p>24 <b>A. He may. I can't comment on his</b></p> <p>25 <b>knowledge.</b></p>
<p style="text-align: right;">79</p> <p>1 - - - - -</p> <p>2 <b>(Thereupon, Deposition Exhibit 5,</b></p> <p>3 <b>Internal Michael Foods Document,</b></p> <p>4 <b>Bates Labeled MFI0553015-0553016,</b></p> <p>5 <b>was marked for purposes of</b></p> <p>6 <b>identification.)</b></p> <p>7 - - - - -</p> <p>8 Q. Showing you, Mr. Feyman, what we've</p> <p>9 marked as Feyman Exhibit 5. I'll represent this</p> <p>10 is an internal Michael Foods document</p> <p>11 Bates-stamped MFI0553015. Like the e-mail, I'm</p> <p>12 providing you a redacted copy of the document.</p> <p>13 I've supplied your counsel with an unredacted</p> <p>14 copy.</p> <p>15 And I want to direct your attention</p> <p>16 to the bullet at the bottom of the first page.</p> <p>17 There's a notation that "Nestlé's/Dreyer's"</p> <p>18 -- that Michael Foods -- "will be switching to</p> <p>19 UEP certified sugar yolk for Dreyer's in</p> <p>20 October. Annual volume is 4 million a year.</p> <p>21 UEP premium obtained is 4¢ per pound."</p> <p>22 Do you see that?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Does this suggest to you that</p> <p>25 Michael Foods supplied Dreyer's with UEP</p>	<p style="text-align: right;">81</p> <p>1 Q. Do you know if anyone talked with</p> <p>2 Monte Mace in connection with obtaining</p> <p>3 documents for purposes of this litigation?</p> <p>4 <b>A. No.</b></p> <p>5 Q. You're not aware either way?</p> <p>6 <b>A. I'm not aware.</b></p> <p>7 Q. You did not, though, correct?</p> <p>8 <b>A. I did not.</b></p> <p>9 Q. Tell me, Mr. Feyman, what did you do</p> <p>10 to educate yourself with respect to the types of</p> <p>11 eggs and egg products or types of egg products</p> <p>12 that Nestlé has purchased from Michael Foods?</p> <p>13 <b>A. I met with various vendors who</b></p> <p>14 <b>supply eggs to Nestlé to understand what each of</b></p> <p>15 <b>the components are.</b></p> <p>16 Q. But with respect to preparing for</p> <p>17 your deposition.</p> <p>18 <b>A. Oh, I didn't do anything to</b></p> <p>19 <b>familiarize myself.</b></p> <p>20 Q. Why did Nestlé begin requiring that</p> <p>21 Dreyer's be supplied with certified egg?</p> <p>22 <b>A. I do not know.</b></p> <p>23 Q. Do you know why Nestlé began</p> <p>24 requiring that it be supplied with certified egg</p> <p>25 to any of its divisions?</p>

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22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1       <b>A. No.</b></p> <p>2       Q. Did you do anything to educate</p> <p>3 yourself with respect to that question?</p> <p>4       <b>A. Only to understand what UEP</b></p> <p>5 <b>represented.</b></p> <p>6       Q. And how did you educate yourself as</p> <p>7 to what UEP represented?</p> <p>8       <b>A. Well, on the web.</b></p> <p>9       Q. Do you have any understanding as to</p> <p>10 why Nestlé began requiring UEP certified egg?</p> <p>11       <b>A. A desire by the marketing teams to</b></p> <p>12 <b>avoid falling behind others and be competitive</b></p> <p>13 <b>on claims.</b></p> <p>14       Q. And say that again.</p> <p>15       <b>A. Be competitive on claims.</b></p> <p>16       Q. What does that mean, "be competitive</p> <p>17 on claims"?</p> <p>18       <b>A. If somebody calls in our 800 number</b></p> <p>19 <b>and asks about animal welfare with birds, we can</b></p> <p>20 <b>answer in the affirmative.</b></p> <p>21       Q. And if you were not supplied with</p> <p>22 UEP certified eggs, you could not provide that</p> <p>23 same answer?</p> <p>24       <b>A. That's correct.</b></p> <p>25       Q. Are you aware of instances in which</p>	<p style="text-align: right;">84</p> <p>1       <b>ice cream division wanted to make claims.</b></p> <p>2       Q. What do you mean by making claims in</p> <p>3 the ice cream division?</p> <p>4       <b>A. That they're using -- considering</b></p> <p>5 <b>animal welfare in the purchase of eggs.</b></p> <p>6       Q. Oh, that they were making claims</p> <p>7 that they did use --</p> <p>8       <b>A. Ben &amp; Jerry's, yes.</b></p> <p>9       Q. Are you aware of any complaints</p> <p>10 lodged against Ben &amp; Jerry's regarding animal</p> <p>11 welfare?</p> <p>12       <b>A. I am not.</b></p> <p>13       Q. So it's your understanding in the</p> <p>14 ice cream division a desire to demand UEP</p> <p>15 certified egg because Ben &amp; Jerry's was making</p> <p>16 the claim that it used UEP certified egg?</p> <p>17       <b>A. Correct.</b></p> <p>18       Q. Are you aware of any other reason</p> <p>19 that Nestlé's ice cream division began requiring</p> <p>20 that the eggs that it is supplied with be UEP</p> <p>21 certified?</p> <p>22       <b>A. No.</b></p> <p>23       Q. And with respect to prepared foods,</p> <p>24 what's your understanding as to why prepared</p> <p>25 foods began demanding UEP certified egg?</p>
<p style="text-align: right;">83</p> <p>1 Nestlé did receive such a call on its 800</p> <p>2 number?</p> <p>3       <b>A. Not firsthand, no.</b></p> <p>4       Q. Are you aware of that anecdotally?</p> <p>5       <b>A. Anecdotally, yes.</b></p> <p>6       Q. And likewise, anecdotally, you're</p> <p>7 aware that Nestlé was able to respond to that</p> <p>8 inquiry -</p> <p>9       <b>A. Yes.</b></p> <p>10       Q. -- with the fact that it is being</p> <p>11 supplied with UEP certified egg?</p> <p>12       <b>A. Correct.</b></p> <p>13       Q. And who did you have that discussion</p> <p>14 with?</p> <p>15       <b>A. I do not recall.</b></p> <p>16       Q. You mentioned a desire to avoid</p> <p>17 falling behind others.</p> <p>18       What do you mean by that?</p> <p>19       <b>A. There was a competitive situation in</b></p> <p>20 <b>ice cream that -- I'm trying to remember the</b></p> <p>21 <b>name, up in Vermont.</b></p> <p>22       Q. Ben &amp; Jerry's?</p> <p>23       <b>A. Ben &amp; Jerry's. At the time, I think</b></p> <p>24 <b>owned by Unilever or maybe hadn't been bought by</b></p> <p>25 <b>Unilever yet. They were making claims and the</b></p>	<p style="text-align: right;">85</p> <p>1       <b>A. I do not know.</b></p> <p>2       Q. Joseph's Pasta, do you know why</p> <p>3 Joseph's Pasta --</p> <p>4       <b>A. I do not know either.</b></p> <p>5       Q. And Toll House, do you know?</p> <p>6       <b>A. Same answer. I do not.</b></p> <p>7       Q. Do you understand that only a UEP</p> <p>8 certified producer can supply Nestlé with UEP</p> <p>9 certified egg?</p> <p>10       MR. CAMPBELL: Objection as to form.</p> <p>11 That's not the case.</p> <p>12       THE WITNESS: Should --</p> <p>13 BY MR. BOETTGE:</p> <p>14       Q. Do you understand the question?</p> <p>15       <b>A. Yeah, I'd like you to repeat the</b></p> <p>16 <b>question.</b></p> <p>17       Q. Sure.</p> <p>18       Do you have any understanding as to</p> <p>19 whether Nestlé can buy egg that's represented to</p> <p>20 be UEP certified egg only from a producer that</p> <p>21 is a UEP certified producer?</p> <p>22       <b>A. I believe that's what makes it UEP</b></p> <p>23 <b>certified, so, yes.</b></p> <p>24       Q. So if a producer was not UEP</p> <p>25 certified, it's your understanding that producer</p>

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23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 could not sell UEP certified egg, correct?</p> <p>2 <b>A. That's correct.</b></p> <p>3 Q. So it's your understanding that</p> <p>4 Michael Foods was a company that was UEP</p> <p>5 certified?</p> <p>6 <b>A. Yes.</b></p> <p>7 MR. CAMPBELL: Objection as to time</p> <p>8 frame.</p> <p>9 BY MR. BOETTGE:</p> <p>10 Q. Do you recall when Michael Foods</p> <p>11 became UEP certified?</p> <p>12 <b>A. I do not.</b></p> <p>13 Q. Do you recall if anyone at Nestlé</p> <p>14 ever expressed any objection to Michael Foods</p> <p>15 having joined the UEP certified program?</p> <p>16 <b>A. No.</b></p> <p>17 Q. And, in fact, as an egg buyer, you</p> <p>18 would want Michael Foods to be a UEP certified</p> <p>19 producer, correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And why is that?</p> <p>22 <b>A. So that they were available to</b></p> <p>23 <b>supply us egg products where we wanted UEP</b></p> <p>24 <b>certified eggs.</b></p> <p>25 Q. So the three divisions you mentioned</p>	<p style="text-align: right;">88</p> <p>1 Q. Anything else?</p> <p>2 <b>A. Specifically, no.</b></p> <p>3 Q. What does Nestlé use the sugared</p> <p>4 yolks that it purchases from Rose Acre for?</p> <p>5 <b>A. Production of Häagen-Dazs ice cream.</b></p> <p>6 Q. Dreyer's as well?</p> <p>7 <b>A. Dreyer's as well, yes.</b></p> <p>8 Q. Does Nestlé require Rose Acre to</p> <p>9 provide the sugared yolks to be UEP certified?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Do you recall when that was?</p> <p>12 <b>A. I do not.</b></p> <p>13 Q. And again, would you need to talk to</p> <p>14 Monte -- or would Monte Mace be the person who</p> <p>15 would have the most information as to when</p> <p>16 Dreyer's/Häagen-Dazs began requiring</p> <p>17 Rose Acre to supply it with --</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. -- certified egg?</p> <p>20 Are there any documents or records</p> <p>21 at the company that would reflect when Nestlé</p> <p>22 began requiring that its eggs be certified?</p> <p>23 <b>A. Not that I'm aware of.</b></p> <p>24 Q. Would that be noted anywhere in the</p> <p>25 transaction data?</p>
<p style="text-align: right;">87</p> <p>1 that you're aware of for Michael Foods selling</p> <p>2 eggs to Nestlé would be prepared foods, Joseph's</p> <p>3 Pasta and Toll House?</p> <p>4 <b>A. Yes. And that includes Buitoni,</b></p> <p>5 <b>Joseph's Pasta.</b></p> <p>6 Q. Do you know if Michael Foods is</p> <p>7 still selling eggs to Nestlé for each of those</p> <p>8 divisions?</p> <p>9 <b>A. They are still selling them. I</b></p> <p>10 <b>don't know to whom.</b></p> <p>11 Q. In other words, you understand that</p> <p>12 Michael Foods is still supplying eggs; you don't</p> <p>13 know to which division?</p> <p>14 <b>A. That is correct.</b></p> <p>15 Q. For which Nestlé products or brands</p> <p>16 did Nestlé purchase egg products from Rose Acre?</p> <p>17 <b>A. Specifically, I do not know.</b></p> <p>18 Q. Do you know which egg products</p> <p>19 Nestlé has purchased from Rose Acre?</p> <p>20 <b>A. Sugared yolks. That's the only one</b></p> <p>21 <b>I'm comfortable to say I'm positive about.</b></p> <p>22 Q. What about Michael Foods? What are</p> <p>23 the egg products that Nestlé has obtained from</p> <p>24 Michael Foods?</p> <p>25 <b>A. Liquid whole extended shelf life.</b></p>	<p style="text-align: right;">89</p> <p>1 <b>A. No.</b></p> <p>2 Q. Do you recall a time when Nestlé</p> <p>3 would require UEP certification for some brands</p> <p>4 or divisions but not others?</p> <p>5 <b>A. I do not.</b></p> <p>6 Q. You don't know either way?</p> <p>7 <b>A. Either way, no.</b></p> <p>8 Q. Who would be the best person or who</p> <p>9 would have the most information as to was there</p> <p>10 a time when one part of Nestlé required UEP</p> <p>11 certified and another part of Nestlé did not?</p> <p>12 <b>A. I do not know any one person.</b></p> <p>13 Q. Who would be some of the people that</p> <p>14 you would need to ask?</p> <p>15 <b>A. I wouldn't -- I couldn't even begin</b></p> <p>16 <b>to guess who would know.</b></p> <p>17 Q. Would it be logical to believe that</p> <p>18 individuals within each of the divisions</p> <p>19 involved in purchasing would know the answer to</p> <p>20 that question?</p> <p>21 <b>A. Those divisions don't do any</b></p> <p>22 <b>purchasing. Our group does the purchasing.</b></p> <p>23 Q. But I understand that it's the</p> <p>24 marketing groups in those divisions that inform</p> <p>25 the purchasing group that it will be demanding</p>

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24 (Pages 90 to 93)

<p style="text-align: right;">90</p> <p>1 UEP certified egg?</p> <p>2 <b>A. That message came from the marketing</b></p> <p>3 <b>group, but I don't know the names.</b></p> <p>4 Q. So it would be logical to assume the</p> <p>5 marketing group for each of these divisions</p> <p>6 would have information that would inform whether</p> <p>7 and when that division began requiring UEP</p> <p>8 certified egg, correct?</p> <p>9 <b>A. Possibly.</b></p> <p>10 Q. Are you aware of anyone asking</p> <p>11 documents from any of the various divisions or</p> <p>12 groups in connection with this lawsuit?</p> <p>13 <b>A. No.</b></p> <p>14 Q. You don't know either way?</p> <p>15 <b>A. Do not know either way.</b></p> <p>16 Q. Do you recall if anyone at Nestlé</p> <p>17 ever expressed any objection to Rose Acre having</p> <p>18 joined the UEP certified program?</p> <p>19 <b>A. No.</b></p> <p>20 Q. And as I asked with Michael Foods,</p> <p>21 as an egg buyer, isn't it true that Nestlé would</p> <p>22 want Rose Acre to be able to provide UEP</p> <p>23 certified eggs?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Is it your understanding that all</p>	<p style="text-align: right;">92</p> <p>1 <b>A. Another way would be a decision that</b></p> <p>2 <b>came down that would say from the head of</b></p> <p>3 <b>purchasing or anybody else.</b></p> <p>4 Q. Are you aware of that occurring?</p> <p>5 <b>A. I am not.</b></p> <p>6 Q. You don't know either way?</p> <p>7 <b>A. I do not know.</b></p> <p>8 Q. And who would have issued that</p> <p>9 order?</p> <p>10 <b>A. I don't know.</b></p> <p>11 Q. When you note that your</p> <p>12 understanding that all egg that Nestlé purchases</p> <p>13 is UEP certified, is that the result of a demand</p> <p>14 that Nestlé has made that all of the egg be UEP</p> <p>15 certified?</p> <p>16 <b>A. It could be, yes.</b></p> <p>17 Q. But you don't know?</p> <p>18 <b>A. I don't know.</b></p> <p>19 Q. So it's possible that some of the</p> <p>20 egg that Nestlé is purchasing today is non-UEP</p> <p>21 certified, correct?</p> <p>22 <b>A. Anything's possible.</b></p> <p>23 Q. You just don't know?</p> <p>24 <b>A. I don't know.</b></p> <p>25 Q. What did you do to educate yourself</p>
<p style="text-align: right;">91</p> <p>1 the egg that Nestlé purchases today is UEP</p> <p>2 certified egg?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. What do you base that on?</p> <p>5 <b>A. Anecdotal.</b></p> <p>6 Q. What do you mean by that?</p> <p>7 <b>A. Buyers were instructed to make sure</b></p> <p>8 <b>they're UEP certified.</b></p> <p>9 Q. So you have an understanding for</p> <p>10 each of the divisions that the purchasing arm of</p> <p>11 Nestlé was instructed by those divisions to</p> <p>12 purchase only UEP certified egg?</p> <p>13 <b>A. I do not.</b></p> <p>14 Q. You don't know?</p> <p>15 <b>A. I don't know.</b></p> <p>16 Q. But you do understand -- but it's</p> <p>17 your understanding that all of the egg that</p> <p>18 Nestlé purchases is UEP certified, correct?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And the reason that Nestlé would</p> <p>21 demand UEP certified egg is if the marketing</p> <p>22 division of the brand told purchasing that it</p> <p>23 should require UEP certified egg, right?</p> <p>24 <b>A. That's one of the ways.</b></p> <p>25 Q. What's another way?</p>	<p style="text-align: right;">93</p> <p>1 as to whether any of the egg it's purchasing</p> <p>2 today is non-UEP certified?</p> <p>3 <b>A. Nothing.</b></p> <p>4 Q. So when Nestlé will purchase eggs on</p> <p>5 behalf of a division, will there be a separate</p> <p>6 contract for those eggs or will there been one</p> <p>7 contract with a vendor that will include eggs to</p> <p>8 be used in different divisions?</p> <p>9 <b>A. One contract could be used by</b></p> <p>10 <b>different factories which then leads different</b></p> <p>11 <b>divisions.</b></p> <p>12 Q. And who's the buyer that's</p> <p>13 identified in those contracts?</p> <p>14 <b>A. Whoever was the buyer that was in</b></p> <p>15 <b>charge of eggs at the time.</b></p> <p>16 Q. And apart from an individual's</p> <p>17 name --</p> <p>18 MR. CAMPBELL: Can I just clarify?</p> <p>19 I think he misunderstood the question.</p> <p>20 By "the buyer," he means which</p> <p>21 Nestlé entity was the buyer.</p> <p>22 MR. BOETTGE: That's fair.</p> <p>23 MR. CAMPBELL: Is that fair, Doug?</p> <p>24 MR. BOETTGE: Yes, correct.</p> <p>25 BY MR. BOETTGE:</p>

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25 (Pages 94 to 97)

<p style="text-align: right;">94</p> <p>1 Q. Which entity is listed as the buyer 2 in the contract?</p> <p>3 <b>A. It wouldn't be. It would be listed 4 on the contract the factory that's allowed to 5 buy off that contract.</b></p> <p>6 Q. Got it.</p> <p>7 So you may have in a contract a 8 number of different factories, and then what I'm 9 getting at is ultimately there's a, I would 10 imagine, a signature block or a representation 11 that this contract is on behalf of a Nestlé 12 entity.</p> <p>13 Is that your understanding?</p> <p>14 <b>A. No. It is not -- there's no such 15 thing as that.</b></p> <p>16 Q. So the contract just lists various 17 factories?</p> <p>18 <b>A. Yeah. And -- and -- the contract 19 lists the material, and the material is approved 20 for certain factories to purchase. It doesn't 21 list the factory.</b></p> <p>22 Q. Okay.</p> <p>23 <b>A. But only the appropriate factory 24 that uses that material can order off that 25 contract. So that's behind the scenes in the</b></p>	<p style="text-align: right;">96</p> <p>1 have the same form as what we're looking at as 2 Trask 8?</p> <p>3 <b>A. Yes, they do.</b></p> <p>4 Q. Then if we look, there's different 5 items listed in this contract and there's a 6 delivery address from each item?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Are those delivery addresses 9 associated with different factories?</p> <p>10 <b>A. That's correct.</b></p> <p>11 Q. Mr. Feyman, are you familiar with 12 the term "grain-based contract"?</p> <p>13 <b>A. Yes, I am.</b></p> <p>14 Q. And what's your understanding of the 15 term?</p> <p>16 <b>A. It would refer to a contract in the 17 price of the commodity or material you're 18 purchasing that fluctuates based upon grain.</b></p> <p>19 Q. So grain is the cost driver in that 20 contract?</p> <p>21 <b>A. In that contract, yes.</b></p> <p>22 Q. Are you familiar with the term 23 "Urner Berry"?</p> <p>24 <b>A. Yes, I am.</b></p> <p>25 Q. And what is Urner Berry?</p>
<p style="text-align: right;">95</p> <p>1 programming.</p> <p>2 Q. We'll take a quick look at a 3 contract to clarify.</p> <p>4 MR. CAMPBELL: Why don't you show 5 him Trask 8.</p> <p>6 MR. BOETTGE: Yes.</p> <p>7 BY MR. BOETTGE:</p> <p>8 Q. Let's take a look at Trask 8. This 9 is a copy of a contract that we identified in a 10 deposition of Mr. Trask.</p> <p>11 Do you recognize this document?</p> <p>12 <b>A. Yeah. I recognize it as an extract 13 of a contract from our SAP system.</b></p> <p>14 Q. When you were referring to the 15 document that shows the volumes that the various 16 divisions can purchase from, is this the type of 17 document you're referring to?</p> <p>18 <b>A. That's right.</b></p> <p>19 Q. Is there a different contract that 20 Nestlé would consider to be its contract when it 21 purchases eggs from a supplier?</p> <p>22 <b>A. No. No.</b></p> <p>23 Q. This is the contract?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Do the contracts Nestlé uses today</p>	<p style="text-align: right;">97</p> <p>1 <b>A. Urner Berry is a reporting agency 2 that publishes pricing information.</b></p> <p>3 Q. And what information does Urner 4 Berry publish?</p> <p>5 <b>A. Breaking stock prices for eggs, also 6 some poultry information and some other 7 materials.</b></p> <p>8 Q. Would you consider the Urner Berry 9 price to be the market price?</p> <p>10 <b>A. Yes, I do.</b></p> <p>11 Q. And your understanding that the 12 Urner Berry market price of eggs is not a cost 13 driver in a grain-based contract?</p> <p>14 <b>A. I'd like you to say that again.</b></p> <p>15 Q. Sure.</p> <p>16 Well, let's step back. And I think 17 you mentioned in a grain-based contract, the 18 cost driver is the cost of grain?</p> <p>19 <b>A. Correct. Go ahead. Yes.</b></p> <p>20 Q. So if you wanted to understand how 21 much you'd be paying for eggs in a particular 22 month, you'd look at what is the price of grain 23 for that month?</p> <p>24 <b>A. No.</b></p> <p>25 Q. What would you look at?</p>

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<p style="text-align: right;">98</p> <p>1       <b>A. Grain would be one of the drivers.</b>  2       <b>Also, energy, overhead, yield, strength.</b>  3       Q. Would the Urner Berry market price  4       of eggs be a cost driver in a grain-based  5       contract?  6       <b>A. No.</b>  7       Q. So in a grain-based contract, you  8       don't have to look at the Urner Berry market to  9       figure out what you're going to pay, correct?  10       <b>A. Correct.</b>  11       Q. Likewise, you don't have to look at  12       the supply of layer hens to know what you're  13       going to pay in a grain-based contract, correct?  14       <b>A. Correct.</b>  15       Q. And, in fact, in a grain-based  16       contract, the price that you pay as an egg buyer  17       is unaffected by what happens on the Urner Berry  18       market, correct?  19       <b>A. Correct.</b>  20       Q. And likewise, in a grain-based  21       contract, the price that you as an egg buyer pay  22       is unaffected by what happens to the supply of  23       hens, correct?  24       <b>A. Correct.</b>  25       Q. Does Nestlé track the market price</p>	<p style="text-align: right;">100</p> <p>1       Q. Why is that?  2       <b>A. Supply and demand dictates the</b>  3       <b>component prices.</b>  4       Q. Can you give me an example?  5       <b>A. If there's a big export of dried-out</b>  6       <b>egg whites, that demand could drive up the price</b>  7       <b>of the market for egg whites worldwide and yolks</b>  8       <b>could stay at the same price or dried whole eggs</b>  9       <b>could stay at the same price.</b>  10       Q. What do you understand are the  11       factors --  12       MR. CAMPBELL: Children's day, ah?  13       THE WITNESS: Yeah. Bring your  14       children to work today, folks.  15       I'm sorry.  16       BY MR. BOETTGE:  17       Q. No, I was just thinking when I came  18       in, I noticed all the candy and I thought kids  19       here must think --  20       <b>A. Yeah.</b>  21       Q. -- all businesses sell all that much  22       candy.  23       <b>A. That's very funny.</b>  24       Q. I think it's terrific.  25       <b>A. Yeah.</b></p>
<p style="text-align: right;">99</p> <p>1       of eggs?  2       <b>A. Yes, we do.</b>  3       Q. How?  4       <b>A. We look at the Urner Berry, and if</b>  5       <b>need be, pull out charts of historical prices.</b>  6       Q. Does Nestlé subscribe to any  7       third-party source of information as to the  8       market of eggs?  9       <b>A. We get materials from another</b>  10       <b>company called Informa.</b>  11       Q. And what do you do with that  12       material?  13       <b>A. Not very much because it's not very</b>  14       <b>adequate for forecasting.</b>  15       Q. What do you mean by that?  16       <b>A. Haven't found it to be able to</b>  17       <b>forecast the market.</b>  18       Q. What else do you use to forecast the  19       market?  20       <b>A. The history of the Urner Berry</b>  21       <b>pricing is pretty much the Bible.</b>  22       Q. Would you agree that the prices for  23       different types of egg products don't move in  24       sync?  25       <b>A. Yes, I do.</b></p>	<p style="text-align: right;">101</p> <p>1       Q. What factors do you understand drive  2       the market price of egg products?  3       THE WITNESS: What did you do to  4       them?  5       MR. BESMAN: It's bring your kids to  6       work day. We should have all brought our kids.  7       THE WITNESS: The major -- the major  8       driver of egg prices is the supply of eggs.  9       BY MR. BOETTGE:  10       Q. What other factors?  11       <b>A. The way I buy, that's the factor.</b>  12       Q. Are you aware of any other factors?  13       <b>A. Of course, demand affects the supply</b>  14       <b>of eggs, but it's still the supply of eggs.</b>  15       Q. What about feed costs? Do you  16       understand that feed costs would affect the  17       price of eggs?  18       <b>A. I do not understand that unless I</b>  19       <b>have a grain-based contract.</b>  20       Q. You don't have an understanding as  21       to if the cost of inputs to an egg would go up,  22       that that may have a corresponding impact on the  23       price for eggs?  24       <b>A. In theory, I agree with that. In</b>  25       <b>practice, that is not the case.</b></p>

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<p style="text-align: right;">102</p> <p>1 Q. What do you base that on, that it's 2 not the case?</p> <p>3 <b>A. Experience that in certain</b> 4 <b>commodities, including eggs, the price can go</b> 5 <b>the exact opposite direction of input costs.</b></p> <p>6 Q. You gave an example of when the 7 price of one part of an egg -- or the trending 8 in price for one part of egg may not follow for 9 another part of egg. Like whites and yolks, 10 correct?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Are you aware of any other examples 13 where the price of an egg product may fluctuate 14 different than another egg product?</p> <p>15 <b>A. I'm sure there are, but I don't have</b> 16 <b>them, and I didn't give that example. You asked</b> 17 <b>me, can it, and I said yes.</b></p> <p>18 Q. Are you aware of that being the 19 case?</p> <p>20 <b>A. For?</b></p> <p>21 Q. Yolks and whites.</p> <p>22 <b>A. It could, but I'm not aware of a</b> 23 <b>specific instance.</b></p> <p>24 <b>You understand that's a different</b> 25 <b>question than . . .</b></p>	<p style="text-align: right;">104</p> <p>1 going to be paying for eggs during the term of 2 the contract, correct?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. Do you know if Michael Foods ever 5 offered Nestlé a grain-based pricing proposal?</p> <p>6 <b>A. I do not.</b></p> <p>7 Q. You don't know either way?</p> <p>8 <b>A. I don't know either way.</b></p> <p>9 Q. What did you do to educate yourself 10 as to whether, in fact, Michael Foods ever 11 offered Nestlé a grain-based pricing proposal?</p> <p>12 <b>A. I did nothing.</b></p> <p>13 Q. Who would know?</p> <p>14 <b>A. I would know if I reviewed the</b> 15 <b>recent history.</b></p> <p>16 Q. What do you mean by that?</p> <p>17 <b>A. I could talk to the last buyer and</b> 18 <b>say, did they ever offer.</b></p> <p>19 Q. And did you do that in preparation 20 for the deposition today?</p> <p>21 <b>A. I did not.</b></p> <p>22 MR. CAMPBELL: We have to redo the 23 whole last 15 minutes now, Doug, because you 24 didn't have your mic on.</p> <p>25 MR. BOETTGE: I think I just knocked</p>
<p style="text-align: right;">103</p> <p>1 Q. What's a fixed contract?</p> <p>2 <b>A. It would be a quantity and price</b> 3 <b>that's established at the date of signing for</b> 4 <b>future dates or a future period of time.</b></p> <p>5 Q. So by entering into a fixed 6 contract, Nestlé would know at the time of 7 contracting what price it will be paying in the 8 future?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. Is it correct also that when Nestlé 11 receives a fixed price, it does not know how the 12 producer has set that fixed price?</p> <p>13 <b>A. No. We have a pretty good</b> 14 <b>understanding how they set the fixed price.</b></p> <p>15 Q. Does the producer tell you how they 16 set the fixed price?</p> <p>17 <b>A. No. It's an experienced</b> 18 <b>understanding that history is used to set the</b> 19 <b>fixed price.</b></p> <p>20 Q. But you don't know that for certain, 21 correct?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. Like in a grain-based contract, in a 24 fixed contract, Nestlé doesn't have to look at 25 the Urner Berry market to know what price it's</p>	<p style="text-align: right;">105</p> <p>1 it off, but let's hope so.</p> <p>2 BY MR. BOETTGE:</p> <p>3 Q. Take a look at what we marked 4 yesterday as Trask Exhibit 3.</p> <p>5 <b>A. Got it. No, that's Feyman 3.</b></p> <p>6 Q. You know what? I think I might have 7 it here. Sorry. That was unfair to you.</p> <p>8 <b>A. Are you trying to trick me?</b></p> <p>9 Q. Is this part of the thing?</p> <p>10 MR. CAMPBELL: It's only with him.</p> <p>11 Most guys are -- have better ethics.</p> <p>12 Do you have Trask 3?</p> <p>13 THE WITNESS: Yes, I do.</p> <p>14 MR. CAMPBELL: Okay.</p> <p>15 BY MR. BOETTGE:</p> <p>16 Q. There's a reference here to the 17 Ariba analysis?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. What's that?</p> <p>20 <b>A. Ariba is a computer program that you</b> 21 <b>can utilize to dispense requests for information</b> 22 <b>or requests for proposals to vendors.</b></p> <p>23 Q. And does the vendor enter 24 information into Ariba in response?</p> <p>25 <b>A. Either that or they attach a</b></p>

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<p style="text-align: right;">106</p> <p>1 <b>spreadsheet.</b></p> <p>2 Q. Does Nestlé still use Ariba?</p> <p>3 <b>A. Yes, we do.</b></p> <p>4 Q. And what do you understand to be the</p> <p>5 attachment to the cover e-mail of Trask 3?</p> <p>6 <b>A. These are the results of an Ariba</b></p> <p>7 <b>event.</b></p> <p>8 Q. I'm going to direct your attention</p> <p>9 to the second column under Michael Foods.</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And specifically to the product</p> <p>12 that's listed as egg white solids powder,</p> <p>13 50-pound kosher.</p> <p>14 Do you see that? It's the second</p> <p>15 item.</p> <p>16 MR. CAMPBELL: I don't see it, Doug.</p> <p>17 Where? Can you give a number?</p> <p>18 MR. BOETTGE: Sure.</p> <p>19 THE WITNESS: Yeah, I got it. 2.2</p> <p>20 you're talking about?</p> <p>21 MR. BOETTGE: That's correct.</p> <p>22 THE WITNESS: Right here.</p> <p>23 MR. CAMPBELL: I see it. Okay.</p> <p>24 THE WITNESS: I see that.</p> <p>25 BY MR. BOETTGE:</p>	<p style="text-align: right;">108</p> <p>1 <b>the right thing?</b></p> <p>2 Q. You are. You are.</p> <p>3 <b>A. Okay. Let's do it that way.</b></p> <p>4 Q. Okay. 2.2 egg white solid powder.</p> <p>5 Do you see that?</p> <p>6 <b>A. Yes, I do see that.</b></p> <p>7 Q. Okay. And then there are various</p> <p>8 fixed prices that are being offered, correct?</p> <p>9 <b>A. And that's the one, two,</b></p> <p>10 <b>three -- fourth column you talk about?</b></p> <p>11 Q. That's the -- well, it's identified</p> <p>12 in the row number as 2.2.2, that's price per</p> <p>13 pound, January through March?</p> <p>14 <b>A. That's why I keep -- oh, okay.</b></p> <p>15 <b>2.2.2?</b></p> <p>16 Q. Correct.</p> <p>17 <b>A. And it reads "January-March (fixed),</b></p> <p>18 <b>4.950 USD"?</b></p> <p>19 Q. Correct.</p> <p>20 <b>A. Okay. I'm with you.</b></p> <p>21 Q. And what do those fixed prices</p> <p>22 represent?</p> <p>23 <b>A. That would represent a price per</b></p> <p>24 <b>pound.</b></p> <p>25 Q. So Michael Foods is offering that</p>
<p style="text-align: right;">107</p> <p>1 Q. There's a formula pricing column at</p> <p>2 2.27?</p> <p>3 <b>A. 2.27?</b></p> <p>4 Q. 2.2.7.</p> <p>5 <b>A. That's down one whole block,</b></p> <p>6 <b>correct?</b></p> <p>7 Q. It's part of the egg white solids</p> <p>8 group under 2.2. Let me step back.</p> <p>9 So this is -- why don't you describe</p> <p>10 what this document is purporting to do here.</p> <p>11 <b>A. This is consolidating the responses</b></p> <p>12 <b>by various vendors to the Ariba event.</b></p> <p>13 Q. And is an Ariba event -- what is an</p> <p>14 Ariba event?</p> <p>15 <b>A. It's a request for proposal, RFP.</b></p> <p>16 Q. How often would those go out?</p> <p>17 <b>A. It goes out based upon the life of</b></p> <p>18 <b>the contract, when it's expiring.</b></p> <p>19 Q. And for this Ariba event, there were</p> <p>20 a number of different items; is that right?</p> <p>21 <b>A. That's fair, yes.</b></p> <p>22 Q. And looking at the second item</p> <p>23 that's listed, that's the egg white solids</p> <p>24 powder under 2.2?</p> <p>25 <b>A. Yeah, I got it. Am I pointing to</b></p>	<p style="text-align: right;">109</p> <p>1 they would sell this white solids powder in the</p> <p>2 October through December period for \$4.80 a</p> <p>3 pound?</p> <p>4 <b>A. Now, you jumped down on me. So</b></p> <p>5 <b>2.2.5 now you're looking at?</b></p> <p>6 Q. Correct.</p> <p>7 <b>A. They would offer it for that period</b></p> <p>8 <b>at \$4.80, that's correct.</b></p> <p>9 Q. So if Nestlé were to adopt</p> <p>10 Michael Foods' proposal, Nestlé would know a</p> <p>11 year in advance the exact price that it would be</p> <p>12 paying for this product, correct?</p> <p>13 <b>A. We would -- this appears to be the</b></p> <p>14 <b>rollup of the RFP for Ariba. These prices then</b></p> <p>15 <b>get negotiated. This is the first step.</b></p> <p>16 Q. Understood.</p> <p>17 <b>A. Okay. So it may not be that price</b></p> <p>18 <b>or another vendor may change that price. This</b></p> <p>19 <b>is a starting point.</b></p> <p>20 Q. Understood.</p> <p>21 <b>A. Okay.</b></p> <p>22 Q. But were Nestlé to accept without</p> <p>23 further negotiation what Michael Foods is</p> <p>24 proposing --</p> <p>25 <b>A. That would --</b></p>

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<p style="text-align: right;">110</p> <p>1 Q. -- Nestlé would know a year in 2 advance the exact price that it would be paying 3 for the -- 4 <b>A. October through December they'd know 5 would be \$4.80 a pound if those conditions that 6 you presented were, in fact, true.</b> 7 Q. Correct. No further negotiations. 8 Now, look down one at 2.2.7. 9 <b>A. Okay.</b> 10 Q. And under Michael Foods, do you see 11 a description there? 12 <b>A. Yes, I do. "Michael Foods GB 13 proposal"?</b> 14 Q. Yes. And is the GB reference there 15 a reference to grain-based? 16 <b>A. More than likely.</b> 17 Q. Do you know who would have 18 considered Michael Foods' grain-based proposal 19 at this time? 20 <b>A. I would have.</b> 21 Q. Do you have any recollection of 22 that? 23 <b>A. I have recollection of discussion of 24 all the grain-based proposals since 2008 to the 25 date I started.</b></p>	<p style="text-align: right;">112</p> <p>1 Q. How do you recognize this? 2 <b>A. I recognize that it's -- no, that's 3 Deposition Feyman 7 -- or 6. I don't recognize 4 the document.</b> 5 Q. I understand. I understand. 6 This is an e-mail from Pres Colwell 7 to Steve Warner and Bill Bush. 8 Do you see that? 9 <b>A. Yes, I do.</b> 10 Q. And who is Steve Warner? 11 <b>A. He was the head of purchasing for 12 raw ingredients.</b> 13 Q. When you mention "raw ingredients," 14 is that still a term that's used at Nestlé? 15 <b>A. Yes.</b> 16 Q. Are you in the raw ingredients 17 group? 18 <b>A. Yes, I am.</b> 19 Q. Is eggs part of raw ingredients? 20 <b>A. Yes, they are. They were.</b> 21 <b>Transfer. They're part of the commodity group 22 right now.</b> 23 Q. And that was three months ago? 24 <b>A. Three months ago.</b> 25 Q. And Steve Warner was the head of raw</p>
<p style="text-align: right;">111</p> <p>1 Q. And do you have any specific 2 recollection as to the Michael Foods grain-based 3 proposal? 4 <b>A. Yes.</b> 5 Q. What is your recollection? 6 <b>A. I turned them all down.</b> 7 Q. Why? 8 <b>A. Too much volatility.</b> 9 Q. What do you mean? 10 <b>A. I have no control of where the 11 prices go because I have no control of grain 12 markets, and I could put our businesses in a 13 noncompetitive position.</b> 14 - - - - - 15 <b>(Thereupon, Deposition Exhibit 6, 16 E-Mail from Pres Colwell to 17 Steve Warner and Bill Bush 18 w/Attachment, dated 3-31-04, Bates 19 Labeled MF10259556, was marked for 20 purposes of identification.)</b> 21 - - - - - 22 Q. I'm going to show you what I believe 23 we've marked as Feyman Exhibit 6. It's a 24 document Bates-stamped MF10259556, an e-mail -- 25 <b>A. I recognize it, yes.</b></p>	<p style="text-align: right;">113</p> <p>1 ingredients purchasing? 2 <b>A. On this date?</b> 3 Q. Yes. 4 <b>A. Yes.</b> 5 Q. Who has that job now? 6 <b>A. Mike Whitcombe.</b> 7 Q. Do you know how long Steve Warner 8 held that job? 9 <b>A. I do not.</b> 10 Q. Do you know if anyone asked 11 Mr. Warner for documents in connection with this 12 litigation? 13 <b>A. I do not.</b> 14 Q. And what about Mr. Bill Bush? 15 <b>A. I don't know him.</b> 16 Q. And the attachment to this e-mail is 17 identified as a Michael Foods grain-based 18 pricing quote. 19 Do you see that? 20 <b>A. Page 1? Yes, I do.</b> 21 Q. Does what's identified as Feyman 22 Exhibit 6 suggest that Michael Foods in 2004 23 proposed a grain-based pricing contract to 24 Nestlé? 25 <b>A. Either proposed or was asked to</b></p>

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<p style="text-align: right;">114</p> <p>1 <b>provide.</b></p> <p>2 Q. Do you know which?</p> <p>3 <b>A. I could not tell from this.</b></p> <p>4 Q. You note a familiarity in 2008 with</p> <p>5 a grain-based pricing proposal from</p> <p>6 Michael Foods.</p> <p>7 Was that proposal invited by Nestlé?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Do you know one way or the other</p> <p>10 whether Michael Foods would have provided a</p> <p>11 grain-based pricing proposal if Nestlé had not</p> <p>12 invited that request?</p> <p>13 <b>A. I believe not because I requested</b></p> <p>14 <b>the grain-based proposal.</b></p> <p>15 Q. But you don't know one way or the</p> <p>16 other whether Michael Foods would have</p> <p>17 voluntarily offered --</p> <p>18 <b>A. I do not.</b></p> <p>19 Q. Do you know if in 2004 Nestlé</p> <p>20 purchased eggs from Michael Foods on a</p> <p>21 grain-based pricing contract?</p> <p>22 <b>A. I have no way of knowing.</b></p> <p>23 Q. You didn't -- did you do anything to</p> <p>24 educate yourself on that question?</p> <p>25 <b>A. I did not.</b></p>	<p style="text-align: right;">116</p> <p>1 Do you see that?</p> <p>2 <b>A. Yes, I do.</b></p> <p>3 Q. Do you have any knowledge one way or</p> <p>4 the other whether, in fact, in July 2006</p> <p>5 Michael Foods presented a grain-based agreement</p> <p>6 to Nestlé?</p> <p>7 <b>A. I do not. I was not here.</b></p> <p>8 Q. Who would have received that</p> <p>9 grain-based pricing proposal from Michael Foods?</p> <p>10 <b>A. I do not know.</b></p> <p>11 Q. Do you know whether, in fact, Nestlé</p> <p>12 accepted a grain-based pricing proposal that</p> <p>13 Michael Foods offered in 2006?</p> <p>14 <b>A. I do not know.</b></p> <p>15 Q. Does this document suggest to you</p> <p>16 that, in fact, Michael Foods did present a</p> <p>17 grain-based pricing contract in July 2006?</p> <p>18 <b>A. That only suggests that.</b></p> <p>19 Q. You have no information that would</p> <p>20 dispute that, correct?</p> <p>21 <b>A. Nor to confirm it.</b></p> <p>22 Q. You don't know either way?</p> <p>23 <b>A. Either way.</b></p> <p>24 Q. Who else has offered grain-based</p> <p>25 pricing to Nestlé? What other vendors?</p>
<p style="text-align: right;">115</p> <p>1 Q. And how would you know? Who would</p> <p>2 be the best person to ask if Nestlé ever</p> <p>3 purchased eggs from Michael Foods on a</p> <p>4 grain-based pricing?</p> <p>5 <b>A. I do not know from back to that</b></p> <p>6 <b>date.</b></p> <p>7 - - - - -</p> <p>8 <b>(Thereupon, Deposition Exhibit 7,</b></p> <p>9 <b>Internal Michael Foods Document,</b></p> <p>10 <b>Bates Labeled MFI0102001-0102006,</b></p> <p>11 <b>was marked for purposes of</b></p> <p>12 <b>identification.)</b></p> <p>13 - - - - -</p> <p>14 Q. Mr. Feyman, I'm going to show you</p> <p>15 what we've marked as Feyman Exhibit 7. It's a</p> <p>16 Michael Foods internal document, Bates-stamped</p> <p>17 MFI0102001. It is also redacted, and I have</p> <p>18 supplied your counsel with an unredacted copy.</p> <p>19 Do you know who Vince O'Brien is?</p> <p>20 <b>A. I do not.</b></p> <p>21 Q. If you'd turn to the fourth page of</p> <p>22 the document, there's an indication that</p> <p>23 Michael Foods "presented grain-based agreements</p> <p>24 to the following customers in July."</p> <p>25 And Nestlé is identified.</p>	<p style="text-align: right;">117</p> <p>1 <b>A. I believe I asked all of them at one</b></p> <p>2 <b>time for that information.</b></p> <p>3 Q. And did you receive grain-based</p> <p>4 pricing from all of them?</p> <p>5 <b>A. Proposals, yes.</b></p> <p>6 Q. And who were those that you asked?</p> <p>7 <b>A. Ballas, Rose Acre, maybe Primera.</b></p> <p>8 <b>It depends on the year, who was selling us at</b></p> <p>9 <b>the time. I think it was in 2008, so that's my</b></p> <p>10 <b>recollection.</b></p> <p>11 Q. Are you aware of Nestlé ever</p> <p>12 purchasing eggs on a grain-based model?</p> <p>13 <b>A. I am not aware they ever did.</b></p> <p>14 Q. You don't know either way?</p> <p>15 <b>A. I do not -- I'm not aware that they</b></p> <p>16 <b>ever did. I've never heard affirmative.</b></p> <p>17 Q. Did you do anything to educate</p> <p>18 yourself as to whether Nestlé has ever purchased</p> <p>19 eggs based on grain-based model?</p> <p>20 <b>A. Back in 2008 when I worked for</b></p> <p>21 <b>Mr. Warner -- he was my original boss that hired</b></p> <p>22 <b>me -- there was a big drive to push the</b></p> <p>23 <b>purchasing of agricultural materials into the</b></p> <p>24 <b>lowest common denominator of cost, which would</b></p> <p>25 <b>be the biggest driver, and go to formula</b></p>

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<p style="text-align: right;">118</p> <p>1 pricing. And that was his direction to me and 2 that's why I reached out to attempt to do it in 3 that area, as well as a number of other areas. 4 Q. When you noted a drive to push 5 purchase of agricultural materials, would that 6 include eggs? 7 A. Yeah, it was eggs. Eggs were 8 included, yes. 9 Q. And you mentioned into the lowest 10 cost? 11 A. Lowest cost driver. 12 Q. What do you mean by "the lowest cost 13 driver"? 14 A. In the case of the eggs, grain plays 15 a major part, feed plays a major part in the 16 cost of eggs and chickens. 17 Q. And "the cost" meaning the price 18 that you paid? 19 A. Final price, yes. 20 Q. And so the drive was to do what 21 exactly? 22 A. To convert our purchasing strategy 23 from a fixed price strategy or an Urner 24 Berry-based strategy, which is basically the 25 same as a fixed price because that's where the</p>	<p style="text-align: right;">120</p> <p>1 Q. Yes. 2 A. Okay. Urner Berry tracks sales and 3 is driven by supply. In a grain-based contract, 4 essentially the supplier of that egg or egg 5 product is saying to lay the egg, it costs this, 6 to provide the heat and the nurturing, it costs 7 this, to pay for the mortality, it costs this, 8 and to pay for the chicken, the feed to make the 9 egg, it costs this. And, therefore, we will 10 charge you those components, plus our utilities, 11 our insurance, our employee labor, and a nominal 12 margin for our hard work. 13 Whereas in Urner Berry, behind the 14 scenes, that's built in there, but that's not 15 how that price is derived. It's derived by 16 looking at sales, which are a function of 17 supply. 18 Q. So you can divorce yourself from 19 supply if you enter into a grain-based contract? 20 A. Correct. 21 Q. And you noted that this was a drive 22 for Mr. Warner? 23 A. It was a corporate strategy review. 24 Since he was my boss, it came to me. 25 Q. And when was that?</p>
<p style="text-align: right;">119</p> <p>1 fixed price comes from -- 2 Q. Again, you don't know that for 3 certain from particular vendors, correct? 4 A. Yeah, I do not know that. 5 Q. So -- 6 A. -- into a grain-based formula 7 pricing. That was the strategy I was asked to 8 implement. 9 Q. And did he tell you why he wanted 10 to push that strategy? 11 A. The organization believed it would 12 bring us lower prices. 13 Q. When you mentioned into the lowest 14 cost driver, that would be the grain-based? 15 A. Yeah. Grain-based would be the 16 lowest cost strategy of purchasing and then 17 you'd -- grain is the largest price driver, so 18 that's why you call it a grain-based. 19 Q. And that would be as opposed to an 20 Urner Berry-based? 21 A. Correct. 22 Q. And I guess I'm still confused why 23 grain versus Urner Berry if you're looking for 24 the lowest cost driver. 25 A. You want me to explain it to you?</p>	<p style="text-align: right;">121</p> <p>1 A. 2008/2009. 2 Q. Do you recall when in 2008? 3 A. I do not. 4 Q. When did you -- 5 A. It could have been discussed in '8, 6 implemented my first full year, in '9. I think 7 that would be it. 8 Q. And this was a discussion you had 9 shortly after you came into Nestlé? 10 A. I believe so, yes. 11 Q. And when did you start in '08? 12 A. August 2008. 13 Q. What did you do to implement that 14 strategy? 15 A. I had Trask on the Ariba event 16 request form the price proposal. 17 Q. Did you do anything else? 18 A. No, not that I recall. 19 Q. Fair to -- well, did you adopt any 20 of those grain-based proposals from anyone? 21 A. I did not. 22 Q. And again, your reasoning was 23 concern of the volatility of the -- 24 A. Volatility. 25 Q. -- of those cost drivers that go</p>

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<p style="text-align: right;">122</p> <p>1 into a grain-based?</p> <p>2 <b>A. Of the grain-based cost driver.</b></p> <p>3 Q. Did you have any further discussions</p> <p>4 with Mr. Warner about this?</p> <p>5 <b>A. I reported back to him why I</b></p> <p>6 <b>rejected it.</b></p> <p>7 Q. What did you tell him?</p> <p>8 <b>A. That in talking with our commodity</b></p> <p>9 <b>people, they were concerned that such a high</b></p> <p>10 <b>degree of impact to the cost of my eggs were</b></p> <p>11 <b>going to be grain, and if we had a bad weather</b></p> <p>12 <b>event or a -- excuse me -- a pest or something</b></p> <p>13 <b>that could include Russia stepping in and buying</b></p> <p>14 <b>a whole bunch of grain -- there were so many</b></p> <p>15 <b>factors that I was -- I had far less to lose</b></p> <p>16 <b>than I had to gain by saving money in a</b></p> <p>17 <b>grain-based formula because it may not save me</b></p> <p>18 <b>money if one of these things happened. They</b></p> <p>19 <b>dissuaded me from it.</b></p> <p>20 Q. You believe there was more risk in</p> <p>21 the grain-based model than in a formula that's</p> <p>22 based on Urner Berry model?</p> <p>23 <b>A. Absolutely. It's volatility risk.</b></p> <p>24 Q. Did you have any discussions with</p> <p>25 anyone else at Nestlé related to grain-based</p>	<p style="text-align: right;">124</p> <p>1 yourself --</p> <p>2 <b>A. Yeah.</b></p> <p>3 Q. -- and Mr. Lewis.</p> <p>4 And is this an example of the types</p> <p>5 of strategy documents that you would ask</p> <p>6 Mr. Trask to put together?</p> <p>7 <b>A. Yeah. This looks like an update to</b></p> <p>8 <b>what is being done, yes. Yeah.</b></p> <p>9 Q. And then I wanted to -- well, let me</p> <p>10 step back.</p> <p>11 So there's different locations</p> <p>12 identified in the e-mail. Bakersfield, Laurel,</p> <p>13 Fort Wayne, Salt Lake City.</p> <p>14 Do you see that?</p> <p>15 <b>A. Yes, I see Bakersfield. Yes, I do.</b></p> <p>16 Q. And this is an e-mail to John Hill;</p> <p>17 is that right? I'm sorry, the subject of this</p> <p>18 e-mail is E-Mail to John Hill?</p> <p>19 <b>A. Yeah, that's the subject listed,</b></p> <p>20 <b>yes.</b></p> <p>21 Q. So fair to assume that Bakersfield,</p> <p>22 Laurel, Fort Wayne, Salt Lake City at this time</p> <p>23 were all plants that were used in creating</p> <p>24 Dreyer's Ice Cream?</p> <p>25 <b>A. Yes.</b></p>
<p style="text-align: right;">123</p> <p>1 pricing?</p> <p>2 <b>A. Just Trask.</b></p> <p>3 Q. How about Ed Lewis?</p> <p>4 <b>A. I don't think so. I don't -- I'm</b></p> <p>5 <b>going to say no.</b></p> <p>6 MR. BOETTGE: Let's take a short</p> <p>7 break.</p> <p>8 MR. CAMPBELL: Sure.</p> <p>9 THE VIDEOGRAPHER: We're off the</p> <p>10 record. The time is 10:50.</p> <p>11 (Recess taken.)</p> <p>12 THE VIDEOGRAPHER: We're on the</p> <p>13 record. The time is 11:03.</p> <p>14 BY MR. BOETTGE:</p> <p>15 Q. Mr. Feyman, I'd like you to now put</p> <p>16 in front of you what we marked yesterday as</p> <p>17 Trask Exhibit 2. And focus on the bottom e-mail</p> <p>18 from Bill Trask, and that's to a Mr. Lewis and</p> <p>19 yourself.</p> <p>20 Do you see that?</p> <p>21 <b>A. Okay. Deposition 2, and you want me</b></p> <p>22 <b>to focus on the --</b></p> <p>23 Q. The bottom e-mail.</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. The e-mail from Bill Trask to</p>	<p style="text-align: right;">125</p> <p>1 Q. And when I say "Dreyer's," I guess I</p> <p>2 mean Häagen-Dazs as well?</p> <p>3 <b>A. Mm-hmm. Yeah.</b></p> <p>4 Q. And are there similar -- would it be</p> <p>5 reasonable to find similar e-mails to</p> <p>6 individuals at each of the various divisions for</p> <p>7 whom you purchase that would lay out the</p> <p>8 strategy that purchasing is looking at for</p> <p>9 acquiring eggs for that product?</p> <p>10 <b>A. No.</b></p> <p>11 Q. What's unique about Dreyer's?</p> <p>12 <b>A. Such a high percent of the cost are</b></p> <p>13 <b>eggs of their finished product.</b></p> <p>14 Q. And as a result, Mr. Hill would be</p> <p>15 more involved in the decision to purchase eggs?</p> <p>16 <b>A. Well, more sensitive to what we've</b></p> <p>17 <b>done and the options we have.</b></p> <p>18 Q. And then at the bottom of the first</p> <p>19 page there's a comment that Nestlé is "currently</p> <p>20 soliciting both fixed and formula pricing for</p> <p>21 Michael Foods."</p> <p>22 Do you see that?</p> <p>23 This is the bottom bullet on the</p> <p>24 first page.</p> <p>25 <b>A. "Currently" -- yes, I see that.</b></p>

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<p style="text-align: right;">126</p> <p>1 Q. Is that your recollection?</p> <p>2 <b>A. It's reasonable.</b></p> <p>3 Q. Do you know why you were soliciting</p> <p>4 both fixed and formula pricing?</p> <p>5 <b>A. We would always look at both ways.</b></p> <p>6 <b>What's the cost on the fixed and how does that</b></p> <p>7 <b>compare to an Urner Berry plus.</b></p> <p>8 Q. When you say "Urner Berry plus,"</p> <p>9 what do you mean?</p> <p>10 <b>A. Well, that's -- that's -- that's the</b></p> <p>11 <b>formula price. See, this isn't a grain formula.</b></p> <p>12 <b>So a grain formula would be something specific</b></p> <p>13 <b>if it said grain formula. This is you're</b></p> <p>14 <b>either buying it -- this is how much you're</b></p> <p>15 <b>paying for the egg component per pound for this</b></p> <p>16 <b>many pounds over this period of time, that would</b></p> <p>17 <b>be a fixed.</b></p> <p>18 <b>Or you're buying it over the Urner</b></p> <p>19 <b>Berry quote plus some overage associated with</b></p> <p>20 <b>that.</b></p> <p>21 Q. And you would want to have both</p> <p>22 prices, or at least --</p> <p>23 <b>A. I would look at both prices, that's</b></p> <p>24 <b>correct.</b></p> <p>25 Q. And there's an indication here in</p>	<p style="text-align: right;">128</p> <p>1 <b>heals price. So if there was volatility, either</b></p> <p>2 <b>way, I might want a shorter contract or I may</b></p> <p>3 <b>want a longer contract.</b></p> <p>4 Q. What would be the instances where</p> <p>5 you'd want a shorter fixed contract versus a</p> <p>6 longer fixed contract?</p> <p>7 <b>A. Because when they calculate the</b></p> <p>8 <b>price in a highly volatile market, on a fixed</b></p> <p>9 <b>price, they build in a margin of error. The</b></p> <p>10 <b>higher the price, the more volatility, the more</b></p> <p>11 <b>they build in.</b></p> <p>12 <b>On a shorter period, because they</b></p> <p>13 <b>won't get stuck and I won't get stuck in the</b></p> <p>14 <b>wrong place, there's less of what we call the</b></p> <p>15 <b>hedge built in to cover for any volatility.</b></p> <p>16 Q. What do you mean by "hedge"?</p> <p>17 <b>A. Well, if something costs 30¢ a pound</b></p> <p>18 <b>and I want to buy that material from you for a</b></p> <p>19 <b>five-year period, and since there's no futures</b></p> <p>20 <b>market that I can use to base my purchase</b></p> <p>21 <b>decision on, you say, I'll sell you that for</b></p> <p>22 <b>five years at 40¢ a pound. That 10¢ would be</b></p> <p>23 <b>the hedge.</b></p> <p>24 Q. Were there times what you would ask</p> <p>25 for fixed contracts of lesser duration?</p>
<p style="text-align: right;">127</p> <p>1 the second paragraph of the e-mail that the</p> <p>2 "quotes will cover 6-month and 12-month</p> <p>3 pricing."</p> <p>4 Do you see that?</p> <p>5 <b>A. Okay. Second paragraph?</b></p> <p>6 Q. Yes. That begins, "I plan to wrap</p> <p>7 up the negotiations"?</p> <p>8 <b>A. Okay. I see that.</b></p> <p>9 Q. And then an indication, "The quotes</p> <p>10 will cover 6-month and 12-month pricing."</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Is that an indication that Nestlé</p> <p>13 had requested quotes that covered 6 and 12</p> <p>14 months of time?</p> <p>15 <b>A. That is correct.</b></p> <p>16 Q. And what was the reason that Nestlé</p> <p>17 asked for quotes in those time increments, 6 and</p> <p>18 12 months?</p> <p>19 <b>A. I can't answer for this specific</b></p> <p>20 <b>one, but we would do that if we expected to see</b></p> <p>21 <b>volatility in the market.</b></p> <p>22 Q. So if you expect volatility, you'll</p> <p>23 ask for a fixed price contract for a longer</p> <p>24 period of time?</p> <p>25 <b>A. I could do it either way for -- time</b></p>	<p style="text-align: right;">129</p> <p>1 <b>A. Could very well be. Than six</b></p> <p>2 <b>months?</b></p> <p>3 Q. Correct.</p> <p>4 <b>A. Probably not, but it could have</b></p> <p>5 <b>happened.</b></p> <p>6 Q. Six months would, in your</p> <p>7 understanding, be the lowest length of time that</p> <p>8 you would ask for for a fixed contract?</p> <p>9 <b>A. I'm sure I've asked for less</b></p> <p>10 <b>someplace, so I'd say, you know, typically, yes,</b></p> <p>11 <b>but it could be less than six months.</b></p> <p>12 <b>I have some contracts in other</b></p> <p>13 <b>things that are daily prices. I mean, it's a</b></p> <p>14 <b>weekly price, so --</b></p> <p>15 Q. But for eggs?</p> <p>16 <b>A. Eggs, yeah, probably six months.</b></p> <p>17 Q. Is it fair to say it's unusual for</p> <p>18 it to be under six months?</p> <p>19 <b>A. That's fair.</b></p> <p>20 Q. And then the last sentence of the</p> <p>21 e-mail notes, "When we have them, we will get</p> <p>22 with DGIC to discuss the appropriate mix to meet</p> <p>23 DGIC's tolerance for fixed versus variable</p> <p>24 pricing."</p> <p>25 Do you see that comment? What's the</p>

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<p style="text-align: right;">130</p> <p>1 reference there to "tolerance"? What's your 2 understanding as to what that means?</p> <p>3 <b>A. Well, it's tolerance and appetite.</b> 4 <b>Do you have -- does the business</b> 5 <b>have the appetite to pay a little bit more to</b> 6 <b>have a fixed price or float with the market to</b> 7 <b>be competitive with their competition? What's</b> 8 <b>the appetite for risk?</b></p> <p>9 Q. And that varied by division?</p> <p>10 <b>A. Yeah. It definitely varies by</b> 11 <b>division.</b></p> <p>12 MR. CAMPBELL: Did you raid the 13 kids' table?</p> <p>14 BY MR. BOETTGE:</p> <p>15 Q. There's a comment that Mr. Trask 16 makes at the end of the first paragraph that 17 begins with the sentence, "However."</p> <p>18 <b>A. The end of --</b></p> <p>19 Q. Maybe it would be helpful to read 20 that entire first paragraph to get the context.</p> <p>21 <b>A. First I got to find it.</b></p> <p>22 Q. Sure.</p> <p>23 <b>A. Is this still on Exhibit 2?</b></p> <p>24 Q. It is. This is Trask Exhibit 2. 25 This is the e-mail from Trask to yourself and</p>	<p style="text-align: right;">132</p> <p>1 <b>have that option on the table.</b></p> <p>2 Q. Let's take a look at what's been 3 marked as Trask Exhibit 4.</p> <p>4 <b>A. Got it.</b></p> <p>5 Q. This is another e-mail from 6 Bill Trask to you and Mr. Lewis. And the first 7 sentence of the e-mail that is underneath the 8 term "John," notes, "We will continue to take 9 advantage of the formula-based pricing from 10 Ballas."</p> <p>11 What did you understand Mr. Trask to 12 mean by that?</p> <p>13 <b>A. I don't remember what I thought in</b> 14 <b>2008. I can only give you an opinion of what I</b> 15 <b>think now.</b></p> <p>16 Q. That's fair.</p> <p>17 <b>A. Okay. It's a price off of the Urner</b> 18 <b>Berry.</b></p> <p>19 Q. So at that point in time, was the 20 Urner Berry down?</p> <p>21 <b>A. I do not know.</b></p> <p>22 Q. And then the fourth sentence there 23 notes, "I think it's still a good idea to keep 24 Michael Foods in the mix because they provide a 25 fixed price."</p>
<p style="text-align: right;">131</p> <p>1 Mr. Lewis.</p> <p>2 <b>A. Okay. I see. "However, I am not</b> 3 <b>sure"?</b></p> <p>4 Q. Sure.</p> <p>5 <b>A. Okay.</b></p> <p>6 Q. But read that first paragraph to 7 give context.</p> <p>8 <b>A. (Document review.) Okay. I've read</b> 9 <b>it.</b></p> <p>10 Q. What do you understand Mr. Trask to 11 mean?</p> <p>12 <b>A. Mr. Trask was thinking that he could</b> 13 <b>convince a vendor to allow him to zigzag between</b> 14 <b>fixed price off the -- which comes off the Urner</b> 15 <b>Berry history or daily and monthly prices that</b> 16 <b>come off the Urner Berry quotes. He thought he</b> 17 <b>could try to get them to switch, let him switch</b> 18 <b>back and forth, and have both on the table,</b> 19 <b>which, of course, was not the case.</b></p> <p>20 Q. What do you mean "not the case"?</p> <p>21 <b>A. Well, you can't -- no vendor, at</b> 22 <b>least in the egg business and probably nowhere</b> 23 <b>else, is going to allow you to move back and</b> 24 <b>forth between what's most favorable to you</b> 25 <b>because they'll put them out of business if they</b></p>	<p style="text-align: right;">133</p> <p>1 Do you see that?</p> <p>2 <b>A. Yes, I do.</b></p> <p>3 Q. Was Ballas providing a fixed price 4 at this time?</p> <p>5 <b>A. I do not know.</b></p> <p>6 Q. Then he states, "which we can hedge 7 against if the market drives the formula price 8 through the roof."</p> <p>9 What do you understand Mr. Trask to 10 have meant by that?</p> <p>11 <b>A. What I understand today?</b></p> <p>12 Q. Correct.</p> <p>13 <b>A. He was probably referring to the</b> 14 <b>fact he had two vendors in that location. And</b> 15 <b>remember, I mentioned there's a sourcing -- the</b> 16 <b>factory can pick who they buy from at a given</b> 17 <b>time. He could move back and forth between</b> 18 <b>either vendor, whichever was more favorable, and</b> 19 <b>that was how he would hedge against a run-up.</b></p> <p>20 Q. And at this point Michael Foods had 21 a fixed-price contract available to --</p> <p>22 <b>A. Based on what this says, yeah, I</b> 23 <b>would say yes.</b></p> <p>24 Q. So if the market was going up, 25 Nestlé could avail itself of the Michael Foods</p>

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35 (Pages 134 to 137)

<p style="text-align: right;">134</p> <p>1 fixed-price contract?</p> <p>2 <b>A. As I interpret this today, that's</b></p> <p>3 <b>what I'd say is the case.</b></p> <p>4 Q. Further in that e-mail, there's a</p> <p>5 statement, "If Dreyer's can lift UEP</p> <p>6 certification, a possible alternative could be</p> <p>7 Rembrandt."</p> <p>8 It's about halfway down.</p> <p>9 <b>A. The first paragraph?</b></p> <p>10 Q. First paragraph.</p> <p>11 <b>A. Okay. I'm trying to find it.</b></p> <p>12 <b>Okay. I see it. (Reading out of</b></p> <p>13 <b>the hearing of the reporter.) Okay.</b></p> <p>14 Q. What do you understand Mr. Trask to</p> <p>15 have meant "If Dreyer's can lift UEP</p> <p>16 certification, a possible alternative could be</p> <p>17 Rembrandt"?</p> <p>18 <b>A. My interpretation today --</b></p> <p>19 Q. Correct.</p> <p>20 <b>A. -- would be that at the time</b></p> <p>21 <b>Rembrandt was not UEP certified and probably had</b></p> <p>22 <b>a more favorable price.</b></p> <p>23 Q. Your understanding was Rembrandt was</p> <p>24 UEP certified?</p> <p>25 <b>A. It was not.</b></p>	<p style="text-align: right;">136</p> <p>1 is a third-party source --</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. -- that Nestlé would look to for</p> <p>4 market information?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And I may have asked, did Nestlé</p> <p>7 look --</p> <p>8 <b>A. Is it Informa or Urner Berry here?</b></p> <p>9 <b>Get me back to the spot you're citing.</b></p> <p>10 Q. Sure, no, fair point.</p> <p>11 I'm looking at the subject line of</p> <p>12 Mr. Trask's September 19 e-mail.</p> <p>13 <b>A. Okay. Informa, yes. Now I see</b></p> <p>14 <b>where you're talking about.</b></p> <p>15 Q. And is it your understanding that</p> <p>16 the information that Mr. Trask is providing here</p> <p>17 is coming from Informa?</p> <p>18 <b>A. It looks more like it's coming from</b></p> <p>19 <b>Urner Berry. That's why I -- he may have</b></p> <p>20 <b>misspoke. I can't -- I can't tell. It's just</b></p> <p>21 <b>-- but it doesn't look like Informa. It looks</b></p> <p>22 <b>like Urner Berry comments.</b></p> <p>23 Q. Did Mr. Trask provide updates to the</p> <p>24 rest of the purchasing team as to what he</p> <p>25 learned from Informa?</p>
<p style="text-align: right;">135</p> <p>1 Q. Not. And lifting UEP certification,</p> <p>2 meaning that they would not continue their</p> <p>3 requirement to be supplied with UEP certified</p> <p>4 egg?</p> <p>5 <b>A. That's correct. Again, my</b></p> <p>6 <b>interpretation today.</b></p> <p>7 Q. Do you know if Dreyer's ever did</p> <p>8 lift their UEP certification?</p> <p>9 <b>A. To my knowledge, they did not.</b></p> <p>10 Q. But had they, they could have</p> <p>11 potentially obtained cheaper eggs from</p> <p>12 Rembrandt?</p> <p>13 <b>A. They could have obtained cheaper</b></p> <p>14 <b>eggs from Michael Foods, yes.</b></p> <p>15 Q. If you look at the last -- or I'm</p> <p>16 sorry -- the third page of the e-mail chain, I</p> <p>17 should say. On the third page of the e-mail</p> <p>18 chain there's an e-mail from Mr. Trask to a</p> <p>19 number of individuals, including, you mentioned</p> <p>20 Monte Mace, John Hill, Ed Lewis and yourself,</p> <p>21 copying Steve Warner.</p> <p>22 Do you see that?</p> <p>23 <b>A. Yes, I do.</b></p> <p>24 Q. And the subject is Informa Weekly</p> <p>25 Egg Comments. And I think you mentioned Informa</p>	<p style="text-align: right;">137</p> <p>1 <b>A. Probably not to the team. If he</b></p> <p>2 <b>learned something from Informa or Urner Berry,</b></p> <p>3 <b>he would share it with the stakeholders, like</b></p> <p>4 <b>John Hill.</b></p> <p>5 Q. How about yourself?</p> <p>6 <b>A. Yes, he would cover it with me as</b></p> <p>7 <b>well.</b></p> <p>8 Q. And you see that he distinguishes,</p> <p>9 or at least has a separate paragraph for shell</p> <p>10 egg values and egg product values?</p> <p>11 <b>A. Right.</b></p> <p>12 Q. And the comment on the first</p> <p>13 sentence, second paragraph, "Egg product values</p> <p>14 didn't budge once again this week and have been</p> <p>15 surprisingly strong and resilient to changing</p> <p>16 market conditions of late."</p> <p>17 <b>A. Okay. I got to find it again.</b></p> <p>18 Q. I'm sorry. That's the first</p> <p>19 sentence of the second paragraph.</p> <p>20 <b>A. (Reading out of the hearing of the</b></p> <p>21 <b>reporter.) Okay. I see that.</b></p> <p>22 Q. As an egg buyer, did you have an</p> <p>23 understanding that the shell egg market was</p> <p>24 different than the egg products market?</p> <p>25 <b>A. Yes, it is different.</b></p>

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<p style="text-align: right;">138</p> <p>1 Q. And how so?</p> <p>2 <b>A. Shell egg is driven by supply and</b></p> <p>3 <b>then demand is on the side of the consumer at</b></p> <p>4 <b>retail. And industrial products, like we buy,</b></p> <p>5 <b>is based upon supply and then supply of breaking</b></p> <p>6 <b>stock and then quoted price for the industrial</b></p> <p>7 <b>buyers.</b></p> <p>8 Q. How is that different than what you</p> <p>9 just indicated as far as the shell egg market?</p> <p>10 <b>A. Well, the similarities, it's all</b></p> <p>11 <b>based upon supply, but they can move -- the</b></p> <p>12 <b>price can move separately. They don't</b></p> <p>13 <b>necessarily always move at the same time.</b></p> <p>14 Q. What are the reasons that they would</p> <p>15 move differently?</p> <p>16 <b>A. Because most of these components are</b></p> <p>17 <b>storable. All these dried spray materials were</b></p> <p>18 <b>made from eggs that were broken weeks, months,</b></p> <p>19 <b>years ago. Those inventories may be adequate to</b></p> <p>20 <b>support the price or allow price to drop.</b></p> <p>21 <b>Whereas the retail market, you know,</b></p> <p>22 <b>it's a fresh product that's perishable, so you</b></p> <p>23 <b>can't store eggs very long.</b></p> <p>24 Q. And again, Nestlé could have avoided</p> <p>25 the fluctuation in the Urner Berry market by</p>	<p style="text-align: right;">140</p> <p>1 inventories. They both are going to price off</p> <p>2 of the available eggs. One is breaking stock,</p> <p>3 one is retail. But since retail is perishable,</p> <p>4 the price moves much more quickly against</p> <p>5 demand.</p> <p>6 <b>And industrial is storable, so if</b></p> <p>7 <b>there's an inventory, even if they cut their</b></p> <p>8 <b>supply of breaking stock, the price goes</b></p> <p>9 <b>differently than the retail markets because</b></p> <p>10 <b>there's -- they got to work off those</b></p> <p>11 <b>inventories. They work off the inventories,</b></p> <p>12 <b>inventories go down, prices go up.</b></p> <p>13 Q. So again, your point is for egg</p> <p>14 products, the price works off the breaking stock</p> <p>15 inventory?</p> <p>16 <b>A. Yes, that's correct.</b></p> <p>17 Q. And there are other factors that go</p> <p>18 into it?</p> <p>19 <b>A. There are other factors, but that's</b></p> <p>20 <b>a big driver.</b></p> <p>21 Q. And again, if Nestlé were purchasing</p> <p>22 off a grain-based contract, it would not be</p> <p>23 subject to inventory of breaking stock; instead</p> <p>24 it would be subject to other cost drivers?</p> <p>25 <b>A. Correct.</b></p>
<p style="text-align: right;">139</p> <p>1 purchasing through a grain-based contract?</p> <p>2 <b>A. Well, we would go from one</b></p> <p>3 <b>volatility to a much greater volatility as the</b></p> <p>4 <b>experts directed me, so I -- I want to avoid it.</b></p> <p>5 <b>In fact, in 2010 or '11, grain went so high that</b></p> <p>6 <b>I would have probably put the ice cream business</b></p> <p>7 <b>out of business. So, I mean, that's hindsight,</b></p> <p>8 <b>but there's no avoiding anything. It's about</b></p> <p>9 <b>risk.</b></p> <p>10 Q. But you mentioned the supply</p> <p>11 of -- were you referring to the supply of eggs</p> <p>12 when you mentioned supply?</p> <p>13 <b>A. On which comment?</b></p> <p>14 Q. Well, we talked about differences</p> <p>15 between the shell egg market --</p> <p>16 <b>A. Right.</b></p> <p>17 Q. -- and the market for egg products.</p> <p>18 <b>A. The supply of egg products are</b></p> <p>19 <b>storable. Frozen, dry. The only ones not</b></p> <p>20 <b>storable is whole.</b></p> <p>21 Q. So when you referred to supply in</p> <p>22 distinguishing between egg markets, shell egg</p> <p>23 and egg product, you're referring to supply of</p> <p>24 different items?</p> <p>25 <b>A. Yeah. I'm talking about</b></p>	<p style="text-align: right;">141</p> <p>1 <b>Now, I want to qualify. When I say</b></p> <p>2 <b>"breaking stock," it's the breaking stock price</b></p> <p>3 <b>that is driving this. It's the inventories that</b></p> <p>4 <b>affect price, okay? I don't price off of</b></p> <p>5 <b>inventory numbers; I price off the cost of</b></p> <p>6 <b>breaking stock.</b></p> <p>7 Q. If you're on a formula-based</p> <p>8 contract?</p> <p>9 <b>A. On a formula, right.</b></p> <p>10 Q. And again, a formula-based contract,</p> <p>11 that's not grain-based?</p> <p>12 <b>A. That's correct.</b></p> <p>13 Q. As an egg buyer, did you recognize</p> <p>14 the difference between egg producers who</p> <p>15 produced primarily market-based shell eggs and</p> <p>16 those that produced egg products?</p> <p>17 <b>A. I don't think I differentiate. I</b></p> <p>18 <b>think they both produce both at one time or</b></p> <p>19 <b>another.</b></p> <p>20 Q. What do you mean by that?</p> <p>21 <b>A. Well, what doesn't go to retail</b></p> <p>22 <b>demand ends up in the breaking stock. I don't</b></p> <p>23 <b>know, and maybe -- I don't know if there's a</b></p> <p>24 <b>separate person producing breaking stock. I'm</b></p> <p>25 <b>not aware of it.</b></p>

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<p style="text-align: right;">142</p> <p>1 Q. Okay. But when you're thinking of</p> <p>2 purchasing for Nestlé, do you think of egg</p> <p>3 producers the same or do you think of those</p> <p>4 producers that principally produce egg products</p> <p>5 versus those that principally produce shell</p> <p>6 eggs?</p> <p>7 <b>A. Principally produce egg products.</b></p> <p>8 Q. And why is that?</p> <p>9 <b>A. Because those are the ones that</b></p> <p>10 <b>respond to our request for proposal.</b></p> <p>11 Q. So based on your understanding of</p> <p>12 the market, do you believe it's an accurate</p> <p>13 statement that the prices of shell eggs and egg</p> <p>14 products do not move up and down together?</p> <p>15 <b>A. They -- at any given time they can</b></p> <p>16 <b>do together, inverse or direct. It just depends</b></p> <p>17 <b>what's going on in the marketplace.</b></p> <p>18 Q. Let's take a look at what we marked</p> <p>19 yesterday as Trask Exhibit 5. Try to go in</p> <p>20 order here to make it a little easier here.</p> <p>21 <b>A. Well, you had them in order, but I</b></p> <p>22 <b>got them all mixed up now.</b></p> <p>23 Q. Let's look at the bottom e-mail in</p> <p>24 the chain which is on page 2, an e-mail from</p> <p>25 Bill Trask to Joe Roberts copying you.</p>	<p style="text-align: right;">144</p> <p>1 <b>communicating to the business stakeholders what</b></p> <p>2 <b>the input costs for their business would be.</b></p> <p>3 <b>NBS, the Nestlé Business Services, bought the</b></p> <p>4 <b>eggs.</b></p> <p>5 Q. Who decided which eggs to buy?</p> <p>6 <b>A. Based on their formulas.</b></p> <p>7 Q. But who was the person at -- was it</p> <p>8 someone at NBS or was it someone with Joseph's</p> <p>9 who made the final decision which eggs --</p> <p>10 <b>A. Which component to buy or who to buy</b></p> <p>11 <b>from?</b></p> <p>12 Q. Who to buy from.</p> <p>13 <b>A. We did an Ariba event and made a</b></p> <p>14 <b>decision as strategic buyers.</b></p> <p>15 Q. If you look at the last page of the</p> <p>16 e-mail chain, there's a listing of suppliers,</p> <p>17 and this is between Michael Foods and Ballas.</p> <p>18 Do you see that?</p> <p>19 <b>A. Yes, I do.</b></p> <p>20 Q. And there's a reference to</p> <p>21 Michael Foods' shelf life.</p> <p>22 Do you see that?</p> <p>23 <b>A. Yes, I do.</b></p> <p>24 Q. Is shelf life important to Nestlé?</p> <p>25 <b>A. Yes, it is.</b></p>
<p style="text-align: right;">143</p> <p>1 <b>A. This is page 2 or page 3?</b></p> <p>2 Q. This is page 2.</p> <p>3 <b>A. Okay. Strategy? Or where are you?</b></p> <p>4 Q. I'm at the top of the e-mail that's,</p> <p>5 again, from Bill Trask --</p> <p>6 <b>A. Okay.</b></p> <p>7 Q. -- to Joe Roberts and yourself. And</p> <p>8 the subject is Joseph's Pasta Liquid Whole Egg</p> <p>9 Overview.</p> <p>10 Do you see that?</p> <p>11 <b>A. Yes, I do.</b></p> <p>12 Q. And what is this document purporting</p> <p>13 to be?</p> <p>14 <b>A. It looks to be an update of the</b></p> <p>15 <b>market situation to the purchasing manager at</b></p> <p>16 <b>Joseph's Pasta.</b></p> <p>17 Q. And was the purchasing manager at</p> <p>18 Joseph's Pasta part of your purchasing group?</p> <p>19 <b>A. Not at that time, no.</b></p> <p>20 Q. He was in Joseph's Pasta division?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. And so was Mr. Roberts responsible</p> <p>23 for ultimately making the decision which eggs to</p> <p>24 purchase?</p> <p>25 <b>A. No. He was responsible for</b></p>	<p style="text-align: right;">145</p> <p>1 Q. Why?</p> <p>2 <b>A. Because we require materials to have</b></p> <p>3 <b>50 percent of their shelf life left on them</b></p> <p>4 <b>before we utilize them in order to ensure the</b></p> <p>5 <b>highest quality goes to our consumer and we make</b></p> <p>6 <b>the best food we can.</b></p> <p>7 Q. Is shelf life a consideration that's</p> <p>8 used in deciding from which egg vendor you'll</p> <p>9 purchase from?</p> <p>10 <b>A. Under certain circumstances, yes.</b></p> <p>11 Q. What are those certain</p> <p>12 circumstances?</p> <p>13 <b>A. It's usually about storage space and</b></p> <p>14 <b>availability in the local marketplace and lead</b></p> <p>15 <b>times.</b></p> <p>16 Q. Was it more valuable to Nestlé to</p> <p>17 have a supplier have a longer shelf life than a</p> <p>18 shorter shelf life?</p> <p>19 <b>A. No, not really. It depends on the</b></p> <p>20 <b>material and the popularity and how frequently</b></p> <p>21 <b>we produce it. It's all over the board. I</b></p> <p>22 <b>can't give you one single answer. I have to</b></p> <p>23 <b>look at each individual material.</b></p> <p>24 Q. If you look at the fourth bullet on</p> <p>25 the prior page under Market Outlook.</p>

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<p style="text-align: right;">146</p> <p>1 <b>A. So I'm on page 1 now?</b>  2 Q. I'm sorry, you're on page 2. This  3 is still that e-mail from -- it's not easy.  4 <b>A. Okay. Market Outlook. Which bullet</b>  5 <b>now?</b>  6 Q. The fourth bullet down.  7 <b>A. Yeah.</b>  8 Q. And there's references there to  9 corn, soybean meal and crude oil?  10 Do you see that?  11 <b>A. Yes, I do.</b>  12 Q. And why is Mr. Trask providing  13 information about the cost for corn, soybean  14 meal and crude oil?  15 <b>A. These would be some of the inputs</b>  16 <b>into the cost of making an egg.</b>  17 Q. And why was that relevant to Nestlé?  18 <b>A. I don't know that he meant for this</b>  19 <b>to be anything more than -- it looks like he</b>  20 <b>copied and paste something out of -- so it</b>  21 <b>just -- we don't center information to our</b>  22 <b>businesses. He gave them an update. I think he</b>  23 <b>copied and paste.</b>  24 Q. Sure.  25 Is the cost of corn, soybean meal</p>	<p style="text-align: right;">148</p> <p>1 <b>something. I apologize.</b>  2 Q. No, you're fine.  3 <b>A. Sometimes -- I just can't find it.</b>  4 Q. Sure. And actually, I think I gave  5 you the wrong bullet. It's the fifth bullet.  6 MR. CAMPBELL: Fifth bullet. He  7 misspoke. Yes. See, there he goes again,  8 trying to trick you.  9 THE WITNESS: Will you watch him?  10 MR. CAMPBELL: Yes.  11 THE WITNESS: Okay. Now, what are  12 you looking for? I increased the --  13 BY MR. BOETTGE:  14 Q. Sure. This is the bullet directly  15 beneath the bullet about markets relating to  16 corn, meal and oil.  17 <b>A. Okay.</b>  18 Q. The fifth bullet. I apologize. And  19 it begins, "While not perfect predictors" --  20 <b>A. Okay. There we go.</b>  21 Q. Okay. And read that sentence, if  22 you would.  23 <b>A. (Reading out of the hearing of the</b>  24 <b>reporter.) I've read it, yes.</b>  25 Q. Do you agree with the sentiment</p>
<p style="text-align: right;">147</p> <p>1 and crude oil something that Nestlé looks at  2 when considering the price of eggs?  3 <b>A. No, we don't because we don't buy on</b>  4 <b>grain formula. The only time before I look at</b>  5 <b>those is when we're buying those for other</b>  6 <b>businesses that buy soybean oil and stuff like</b>  7 <b>that as an ingredient. It has no bearing for me</b>  8 <b>because it's not a future predictor of anything</b>  9 <b>in certain markets like eggs.</b>  10 Q. So you mention this is a cut and  11 paste.  12 Do you have an understanding that  13 this was included as information that would lead  14 someone to understand where the egg market would  15 go?  16 <b>A. I -- I -- I don't recall talking</b>  17 <b>about the document. I don't recall why Joe</b>  18 <b>requested it, and I just can't answer that.</b>  19 Q. If we look at the fourth bullet,  20 there's a comment, "While not perfect  21 predictors, these markets do provide a general  22 direction for downstream items that use these  23 commodities as inputs."  24 Do you see that?  25 <b>A. You guys must think I'm blind or</b></p>	<p style="text-align: right;">149</p> <p>1 that's expressed, that markets for corn, meal  2 and oil provide a general direction for  3 downstream items that use these commodities as  4 inputs?  5 <b>A. Under the best of circumstance and</b>  6 <b>general direction, as soon as I see the word</b>  7 <b>"assumption," you know what that does.</b>  8 Q. What do you mean "under the best of  9 circumstances"?  10 <b>A. In a perfect world, they should be a</b>  11 <b>predictor or direction, but it does not always</b>  12 <b>happen that way.</b>  13 Q. Why don't you take a look at what we  14 looked at earlier as Trask Exhibit 8. It's a  15 copy of the contract from June 15th, 2008.  16 MR. CAMPBELL: It's this one.  17 THE WITNESS: Okay.  18 BY MR. BOETTGE:  19 Q. You can use mine.  20 <b>A. No, I got it.</b>  21 MR. BESMAN: Do you need a break?  22 I'm pointing to the court reporter.  23 THE REPORTER: No, I'm okay. It's  24 getting loud, though.  25 MR. BESMAN: I know. It must be</p>

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<p style="text-align: right;">150</p> <p>1 tough on you to --</p> <p>2 MR. CAMPBELL: It's going to build</p> <p>3 character for her.</p> <p>4 THE WITNESS: They'll be over soon.</p> <p>5 I don't think they're here much longer.</p> <p>6 MR. BESMAN: We've got to keep this</p> <p>7 door shut for the court reporter. She can't</p> <p>8 hear.</p> <p>9 THE WITNESS: Okay. I have</p> <p>10 Exhibit 8, Trask.</p> <p>11 BY MR. BOETTGE:</p> <p>12 Q. And is this an example of a 6-month</p> <p>13 contract?</p> <p>14 A. No. I -- I --</p> <p>15 MR. CAMPBELL: (Pointing.)</p> <p>16 THE WITNESS: (Document review.)</p> <p>17 There are different materials here. There's</p> <p>18 some of these that don't have conditions that</p> <p>19 are less than six months. See?</p> <p>20 For discussion's sake, I'm going to</p> <p>21 say yes because the date here is six months, but</p> <p>22 on each individual item there seems to be some</p> <p>23 conditions that are less than six months.</p> <p>24 BY MR. BOETTGE:</p> <p>25 Q. And let's look at the first one. I</p>	<p style="text-align: right;">152</p> <p>1 at this right now, I can't tell. So I know</p> <p>2 it -- let me give you an example outside of eggs</p> <p>3 so that you know I'm not just picking on</p> <p>4 your . . .</p> <p>5 Fresh meat is priced on a daily</p> <p>6 market and a weekly basis. But what I put in</p> <p>7 the contract, I got to tell them fresh meat</p> <p>8 costs \$5 a pound. I need a number. Every week</p> <p>9 my fresh meat price changes. I send those</p> <p>10 prices to the factories. The POs were issued</p> <p>11 four to six weeks before I knew what the price</p> <p>12 is. They got to use the price in the contract.</p> <p>13 We'll go in and change the price before it's</p> <p>14 delivered so the invoice and the price match so</p> <p>15 I can pay the bill.</p> <p>16 Now, I can't tell whether these are</p> <p>17 fixed prices or they're going to be prices at</p> <p>18 one or breaking stock plus.</p> <p>19 Q. I think I understand what you're</p> <p>20 saying.</p> <p>21 A. Yeah.</p> <p>22 Q. When we looked back at the Ariba</p> <p>23 analysis for 2008, we saw that there were prices</p> <p>24 for different three-month periods, but they were</p> <p>25 fixed out three months, three months, three</p>
<p style="text-align: right;">151</p> <p>1 think what you're referring to, there's a</p> <p>2 condition valid --</p> <p>3 A. Right.</p> <p>4 Q. -- June 15th, '08 to September 28th,</p> <p>5 2008?</p> <p>6 A. Yeah, that's what I'm referring to.</p> <p>7 Q. Okay. And then a separate</p> <p>8 condition, October 1, '08 to December 31, '08?</p> <p>9 A. Yeah. Yeah.</p> <p>10 Q. So you would be -- if you purchased</p> <p>11 pursuant to this contract, you would be paying</p> <p>12 different prices based on the time period?</p> <p>13 A. That's right.</p> <p>14 Q. But isn't it also true that you</p> <p>15 would know on June 15th, 2008 what price you'd</p> <p>16 be paying on December 31st, 2008?</p> <p>17 A. Okay. I've got to qualify this,</p> <p>18 that if we have a fixed-price contract and a</p> <p>19 formula price off the Urner Berry breaking</p> <p>20 stock, they're both going to look the same here</p> <p>21 because we must put in a price when we put in a</p> <p>22 contract.</p> <p>23 But then as those formula prices</p> <p>24 change, my people go in with the factory people</p> <p>25 and adjust the purchase order price. So looking</p>	<p style="text-align: right;">153</p> <p>1 months, and I believe I asked you if Nestlé were</p> <p>2 to purchase from that fixed-price contract, they</p> <p>3 would know a year ahead of time exactly what</p> <p>4 price they'd be paying if they opted into that</p> <p>5 fixed contract, correct?</p> <p>6 A. Yeah. If they took four periods of</p> <p>7 three months and they were fixed prices, then</p> <p>8 you know one year ahead of time.</p> <p>9 Q. Okay. But what you're saying is</p> <p>10 looking at this Trask 8, you can't tell --</p> <p>11 A. Right.</p> <p>12 Q. -- whether, in fact, these prices</p> <p>13 were just set in there initially or were the</p> <p>14 prices that Nestlé paid?</p> <p>15 A. That's correct. There's a</p> <p>16 placeholder -- they may be in there as a</p> <p>17 placeholder so we can cut POs against it. I</p> <p>18 don't know the answer to it.</p> <p>19 Q. How would one know? What would you</p> <p>20 look at to know?</p> <p>21 A. You'd probably have to go -- have to</p> <p>22 pull invoices out of Iron Mountain to 2008. I</p> <p>23 don't even know what the retention is of them.</p> <p>24 I don't know the answer to that.</p> <p>25 Q. If you look at the third page of the</p>

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<p style="text-align: right;">154</p> <p>1 document, there's -- well, let's just go through 2 this.</p> <p>3 There's different items listed, 4 correct?</p> <p>5 <b>A. Correct.</b></p> <p>6 Q. And like as an example, the first 7 item, this egg albumen powder spray, there's a 8 listing as per spec number and then there's a 9 spec number. This is on the second page where 10 this item continues.</p> <p>11 Per spec number and then there's a 12 spec number for that, correct?</p> <p>13 <b>A. Yep.</b></p> <p>14 Q. And this would be the price or the 15 conditions where this product would be delivered 16 to Bloomington, Illinois?</p> <p>17 <b>A. In the case of that material, yes.</b></p> <p>18 Q. And then if you look down, the next 19 few items follows that similar -- there's a spec 20 number and then a delivery address.</p> <p>21 Do you see that?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And then if you look to the third 24 page for Item 50, there is in that same section 25 we're looking at toward the left of the square,</p>	<p style="text-align: right;">156</p> <p>1 Q. Do you recognize this document?</p> <p>2 <b>A. I do not.</b></p> <p>3 Q. Let me ask you this: Are you 4 familiar with this arrangement of data?</p> <p>5 <b>A. This would be some type of query 6 that was put into the system. That's what I 7 recognize.</b></p> <p>8 Q. And the system being SAP?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And I'll represent to you that this 11 was a document that was produced in this 12 litigation --</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. -- from Nestlé.</p> <p>15 What do you understand this to be?</p> <p>16 <b>A. A query put into the system to list 17 by vendor and material code and description, 18 along with a PO number an invoice amount for 19 certain egg products. Now, let me look at the 20 rest.</b></p> <p>21 Q. Now, I'll represent that this was 22 purported to be transaction data from 2006 to 23 2011 from Nestlé, and if I were to print out all 24 of the data, it would be 52 pages long.</p> <p>25 <b>A. Okay. I see.</b></p>
<p style="text-align: right;">155</p> <p>1 a comment about "UB unpast whole, high side plus 2 .12."</p> <p>3 Do you see that?</p> <p>4 <b>A. I do see that.</b></p> <p>5 Q. What is that a reference to?</p> <p>6 <b>A. I don't know what unpast -- that 7 could be unpasteurized.</b></p> <p>8 <b>They may have made a notation in 9 here that this is a -- this is a formula price 10 breaking stock plus 12¢, okay? You can make 11 comments on these individual lines, but they're 12 not required or mandatory. This is the first 13 time I saw that one.</b></p> <p>14 <b>So I would guess this designates a 15 formula price on this one.</b></p> <p>16 Q. Can you draw any inference where 17 that is not indicated; that, in fact, it's a 18 fixed contract not changing?</p> <p>19 <b>A. You cannot. You cannot.</b></p> <p>20 Q. Would you take a look at what has 21 been marked as Trask Exhibit 9?</p> <p>22 THE WITNESS: I'll race you.</p> <p>23 MR. CAMPBELL: It's this one.</p> <p>24 THE WITNESS: Got it.</p> <p>25 BY MR. BOETTGE:</p>	<p style="text-align: right;">157</p> <p>1 Q. So I'm just printing out for our 2 purposes the first two and the last two pages.</p> <p>3 <b>A. Oh, I see.</b></p> <p>4 Q. And let's go through the columns 5 really quickly.</p> <p>6 You see on the left there's a Vendor 7 column?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And Ballas Egg Products is a vendor 10 of Nestlé?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And then there's a Fiscal Month. 13 Do you see that?</p> <p>14 <b>A. Yes, I do.</b></p> <p>15 Q. And what does that relate to here?</p> <p>16 <b>A. I don't know. I don't know what 17 that means.</b></p> <p>18 Q. Do you have an understanding that 19 that's the purchases that were made during that 20 month for the egg product?</p> <p>21 <b>A. I do not have that understanding. 22 I've never seen that term.</b></p> <p>23 Q. You don't have an understanding 24 either way?</p> <p>25 <b>A. No.</b></p>

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<p style="text-align: right;">158</p> <p>1 Q. Do you know if Nestlé's SAP data 2 captures transactions? 3 <b>A. I'm sure it does.</b> 4 Q. Do you know if that transaction data 5 was produced in the litigation? 6 <b>A. Anything that was in the SAP system 7 that was on the request for documents was 8 queried into SAP or pulled from storage in Iron 9 Mountain and would have been turned over.</b> 10 Q. Do you understand that what's -- or 11 would you characterize what's contained in 12 Trask 9 to be transaction data? 13 <b>A. I think it is what it's labeled to 14 be. I mean, you're calling it transaction data. 15 It's specific information about vendors and 16 materials and purchases. I don't know what else 17 to call it.</b> 18 Q. Does it reflect the actual prices 19 that Nestlé paid? 20 <b>A. I have no way of knowing that.</b> 21 Q. Does Nestlé have in SAP information 22 that would show the actual prices that Nestlé 23 paid for egg products? 24 <b>A. Yes, it would.</b> 25 Q. And do you know if that data records</p>	<p style="text-align: right;">160</p> <p>1 <b>A. Anytime the system generates a 2 requisition requiring materials, it's converted 3 into a purchase order.</b> 4 Q. So the purchase order would show, in 5 fact, that eggs were purchased? 6 <b>A. That's correct.</b> 7 Q. And is it your understanding that 8 the invoice amount is the amount that was 9 identified on the invoice for that purchase? 10 <b>A. Since I don't compare the two, I'm 11 going to use -- I can't say yes or no. I only 12 can say that this got an invoice amount.</b> 13 Q. And you don't know whether that 14 invoice amount is what's identified on the 15 purchase order column corresponding to that 16 purchase, correct? You don't know one way or 17 the other? 18 <b>A. I have every reason to believe it 19 does and you can probably test one by 20 multiplying invoice quantity by unit price. You 21 know what I'm saying?</b> 22 23 24 25</p>
<p style="text-align: right;">159</p> <p>1 purchases for each purchase that was made? 2 <b>A. Say that a different way.</b> 3 Q. Do you know if the -- I think you 4 indicated that the transaction data or the SAP 5 data that Nestlé has identifies the actual 6 purchases that Nestlé made for eggs? 7 <b>A. Yes, that would be an accurate 8 representation of pricing.</b> 9 Q. And do you know if that data 10 captures specific transactions as opposed to 11 aggregating a group of transactions? 12 <b>A. Specific transactions are there.</b> 13 Q. Do you know one way or the other 14 whether what's shown in Trask 9 is identifying a 15 specific transaction or aggregate transactions? 16 <b>A. That would be a specific 17 transaction.</b> 18 Q. You think there are -- this is 19 representing specific transactions? 20 <b>A. Yes.</b> 21 Q. What makes you believe -- say that? 22 <b>A. Because there's a purchase order 23 number, so it ties out two-way transaction.</b> 24 Q. When is a purchase order number 25 created?</p>	<p style="text-align: right;">161</p> <p>1 - - - - - 2 (Thereupon, Deposition Exhibit 8, 3 Speed Analysis, Bates Labeled 4 NES00004501, was marked for purposes 5 of identification.) 6 - - - - - 7 Q. Showing you, Mr. Feyman, a document 8 that I'll represent is an excerpt of the data 9 that is contained in Trask 9. Again, Trask 9 10 being an excerpt. But from all of that data 11 from the Bates-stamped NES00004501, the 12 information that's contained on Feyman 8 is an 13 excerpt for that data. 14 And I'll further represent that the 15 information that's on Feyman 8 was obtained by 16 identifying purchases from Michael Foods for the 17 period July through December of 2008 for the 18 particular material 22002238. 19 Do you see that? 20 <b>A. I see all of that, yes.</b> 21 Q. Let's turn to page -- let's compare 22 this to Trask 8. So have both of the documents 23 in front of you. 24 <b>A. Okay.</b> 25 Q. And let's go to the fourth page of</p>

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<p style="text-align: right;">162</p> <p>1 Trask 8, and particularly Item 100.</p> <p>2 <b>A. Okay.</b></p> <p>3 Q. And do you see that material number</p> <p>4 for Item 100 is 22002238.</p> <p>5 Do you see that?</p> <p>6 <b>A. Yes, I do.</b></p> <p>7 Q. And do you understand that to be the</p> <p>8 same material as what's reflected in Feyman 8?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And this is for egg whole liquid</p> <p>11 pasturized 30 pounds, correct?</p> <p>12 <b>A. Yes, it is.</b></p> <p>13 Q. And what is egg whole liquid</p> <p>14 pasturized used for?</p> <p>15 <b>A. Oh, I wouldn't be able to share</b></p> <p>16 <b>that. I don't know.</b></p> <p>17 Q. And I think you indicated your</p> <p>18 understanding that a fair inference of the data</p> <p>19 that's contained on Feyman 8 reflects the</p> <p>20 purchase price that Nestlé paid for items?</p> <p>21 <b>A. That's correct.</b></p> <p>22 Q. And do you recognize that the prices</p> <p>23 that are listed in Feyman 8 for this material</p> <p>24 22002238 matched the prices listed in the</p> <p>25 contract that is Trask Exhibit 8?</p>	<p style="text-align: right;">164</p> <p>1 6-15-08"?</p> <p>2 <b>A. Yes, I do. Yeah.</b></p> <p>3 Q. And that's the condition -- I</p> <p>4 apologize -- that I want you to focus on.</p> <p>5 <b>A. Okay.</b></p> <p>6 Q. What is the information that's</p> <p>7 conveyed by the use of the term "condition valid</p> <p>8 from" with a date?</p> <p>9 <b>A. That would be the prices valid for</b></p> <p>10 <b>that period of time.</b></p> <p>11 Q. Understood.</p> <p>12 And do you recognize that the prices</p> <p>13 that are listed for the dates on the contract,</p> <p>14 Trask 8, match the prices that are identified on</p> <p>15 Feyman 8?</p> <p>16 <b>A. Well, that's the -- and the</b></p> <p>17 <b>interesting part of it is I got a conflict</b></p> <p>18 <b>between -- no, I do not. From -- so from 9-29</b></p> <p>19 <b>to 9-30, there's a 1.01, and I don't know why</b></p> <p>20 <b>that's there because it's only one day.</b></p> <p>21 Q. Is that a conflict or is that --</p> <p>22 <b>A. Well, it's an unexplained condition.</b></p> <p>23 <b>I don't understand. So your question is?</b></p> <p>24 Q. Do the prices that are listed on</p> <p>25 Feyman 8 match the prices that are listed in</p>
<p style="text-align: right;">163</p> <p>1 <b>A. Just give me a moment to check.</b></p> <p>2 <b>Yeah, they match two of the three</b></p> <p>3 <b>conditions.</b></p> <p>4 Q. What do you mean by that?</p> <p>5 <b>A. Well, on Item 100, there are three</b></p> <p>6 <b>prices, 1.02, 1.01 and 1.12.</b></p> <p>7 <b>On Feyman 8, there's two prices,</b></p> <p>8 <b>1.02 and 1.12.</b></p> <p>9 Q. Let's talk about the conditions that</p> <p>10 are identified on Trask 8.</p> <p>11 You noted that there are three</p> <p>12 conditions, correct?</p> <p>13 <b>A. Yes, I did.</b></p> <p>14 Q. What's being conveyed by those</p> <p>15 conditions?</p> <p>16 <b>A. It looks like transactions from</b></p> <p>17 <b>Michael Foods is a condition, Column B, filtered</b></p> <p>18 <b>for July through December, fiscal month.</b></p> <p>19 Q. I understand. I may have misspoke.</p> <p>20 I was asking about Trask 8 --</p> <p>21 <b>A. Oh.</b></p> <p>22 Q. -- the contract, and specifically,</p> <p>23 there's the term "condition valid."</p> <p>24 Do you see that on Trask 8? This is</p> <p>25 for Item 100. There's "condition valid from</p>	<p style="text-align: right;">165</p> <p>1 Trask 8, the contract?</p> <p>2 <b>A. Yes, they do.</b></p> <p>3 Q. So we talked earlier about your not</p> <p>4 knowing based on the contract itself, Trask 8,</p> <p>5 whether, in fact, these prices are fixed prices</p> <p>6 or formula prices that were plugs; is that fair?</p> <p>7 <b>A. Correct. Well, not plugs. A</b></p> <p>8 <b>marker.</b></p> <p>9 Q. Marker. The price that was in</p> <p>10 existence at that day --</p> <p>11 <b>A. Okay.</b></p> <p>12 Q. -- but may not, in fact, be the</p> <p>13 price that --</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. -- Nestlé would pay for those goods.</p> <p>16 Does going through this exercise</p> <p>17 that we went through with Feyman 8, does that</p> <p>18 suggest to you that at least that item,</p> <p>19 22002238, in fact, these were fixed prices?</p> <p>20 <b>A. Yes, it does.</b></p> <p>21 Q. And, in fact, you could go through</p> <p>22 that exercise with all of the items and</p> <p>23 determine whether in fact this was fixed-price</p> <p>24 contracting or formula-based contracting?</p> <p>25 <b>A. You would have to, yes.</b></p>

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<p style="text-align: right;">166</p> <p>1 Q. And, in fact, if you do that and 2 come to the same conclusion we reached here, 3 that would lead you to believe with some 4 confidence that, in fact, that is fixed-price 5 contracting? 6 <b>A. As you went through the proving out 7 of the invoice payment, yes.</b> 8 - - - - - 9 <b>(Thereupon, Deposition Exhibit 9, 10 Fax to Terry Baker from Pres Colwell 11 w/Attachments, dated 11-16-04, Bates 12 Labeled MFI0259539-10259546, was 13 marked for purposes of 14 identification.)</b> 15 - - - - - 16 Q. Showing you, Mr. Feyman, what we've 17 marked as Feyman Exhibit 9. It's a 18 Michael Foods document that is Bates-stamped 19 MFI0259539. 20 Do you see that? At least recognize 21 the Bates number on that? 22 <b>A. Oh, yeah.</b> 23 Q. Okay. Turn to the third page of the 24 document. I just have a few questions about 25 this.</p>	<p style="text-align: right;">168</p> <p>1 Do you see that? 2 <b>A. Yes, I do.</b> 3 Q. Do you know who the "Steve" is 4 that's being referenced there? 5 <b>A. I have no idea.</b> 6 Q. Then it states, "Liquid pricing 7 fixed Jan through June, delivered 12,000 or more 8 per bulk transfer." 9 What does that mean? 10 <b>A. That the tanker has to -- we have to 11 take at least 12,000 pounds per load and that it 12 is a fixed price for that period of time.</b> 13 Q. So is that a condition that you must 14 have 12,000 pounds per tanker? 15 <b>A. Or they could assess a higher price 16 on you that may be -- I wasn't part of those 17 negotiations.</b> 18 Q. Sure. But your understanding -- 19 <b>A. It predates me.</b> 20 Q. -- sitting here is that so long as 21 Nestlé acquired 12,000 or more, its pricing 22 would be fixed from January through June, is 23 that fair? 24 <b>A. It appears to be, yes.</b> 25 Q. And then the next sentence, "Nestlé</p>
<p style="text-align: right;">167</p> <p>1 Do you see there's a signature at 2 the bottom right? 3 <b>A. Yes, I do.</b> 4 Q. And who's that signature of? Who 5 signed this contract? 6 <b>A. The last name is, looks like it's 7 W-A-R-N-E -- and the only name that's close to 8 that is that Warner. So, I mean, I can't say 9 that's his signature. I don't recognize that as 10 his signature.</b> 11 Q. Sure. What was Mr. Warner's first 12 name? 13 <b>A. Steve.</b> 14 Q. And does the first name that's 15 identified here look like Steven to you? 16 <b>A. I just don't think I'm qualified to 17 identify his signature.</b> 18 Q. Okay. And this is a contract with a 19 start date of January 1, 2005, an end date of 20 December 31, 2005? 21 <b>A. It appears to be, yes.</b> 22 Q. And there's language, 23 "Contract" -- this is now on the first page, 24 typed in language in the middle, "Contract 25 created Steve to Pres Colwell, 11-2-04."</p>	<p style="text-align: right;">169</p> <p>1 has the right to convert whole and yolk powders 2 in Danville to super sacks with lead time for 3 transition." 4 What's that a reference to? 5 <b>A. I can refer or tell you what a super 6 sack is. Instead of a -- excuse me. 7 Instead of 50-pound bags, which 8 typically a lot of people see things loaded, a 9 super sack is a woven 2000-pound bag that is 10 used to more efficiently deliver dry 11 ingredients.</b> 12 <b>So, I mean, we -- we must have been 13 planning to try to convert the yolk products or 14 dry products into super sacks.</b> 15 Q. Real quick. Back to Trask 9, which 16 is the excerpt of the spend analysis data? 17 <b>A. Got it. Yes.</b> 18 Q. Just quickly, when you see spend 19 analysis invoice based, which is the top left, 20 what do you understand that to be a reference 21 to? 22 <b>A. Invoices we used for the spend 23 analysis.</b> 24 Q. And a spend analysis is what? 25 <b>A. I think it's a very generic term.</b></p>

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<p style="text-align: right;">170</p> <p>1 <b>It could have -- you specify the condition, so</b>  2 <b>it could be any and all many things. This spend</b>  3 <b>analysis has the columns marked as such. That's</b>  4 <b>what was requested.</b>  5 Q. Does spend analysis suggest to you  6 that these are dollars that Nestlé spent?  7 <b>A. That is correct.</b>  8 Q. And then I think we were talking  9 about the month, year, then there's Plant as a  10 column.  11 Do you see that?  12 <b>A. Yes, I do.</b>  13 Q. And what's the significance of that  14 column, Plant?  15 <b>A. It tells you for whom that purchase</b>  16 <b>order was issued by.</b>  17 Q. Are purchase orders issued by every  18 plant?  19 <b>A. Yes, they are.</b>  20 Q. Are all of the plants included in  21 SAP?  22 <b>A. Yes, with the exception of Joseph's</b>  23 <b>Pasta, and I don't know when -- I don't know</b>  24 <b>when Dreyer's went online. I don't know when</b>  25 <b>Dreyer's got on to the Globe system.</b></p>	<p style="text-align: right;">172</p> <p>1 Q. Have you ever seen their data?  2 <b>A. I don't recall.</b>  3 Q. Do you have an understanding whether  4 Dreyer's maintains transactional data?  5 <b>A. Oh, I'm sure they absolutely do.</b>  6 Q. Globe is, I think, a term you  7 mentioned and I see that on Trask 9.  8 What is Globe?  9 <b>A. It's a software package.</b>  10 Q. Does it use SAP?  11 <b>A. Yes.</b>  12 Q. What is the software package that  13 Dreyer's used?  14 <b>A. I do not know.</b>  15 - - - - -  16 <b>(Thereupon, Deposition Exhibit 10,</b>  17 <b>Egg Purchase 2000-2005, Bates</b>  18 <b>Labeled NES00004500, was marked for</b>  19 <b>purposes of identification.)</b>  20 - - - - -  21 Q. Showing you, Mr. Feyman, what we've  22 marked as Feyman Exhibit 10, and I'll represent  23 this is data that Nestlé produced in the  24 litigation purporting to be sales data for the  25 period 2000 to 2005.</p>
<p style="text-align: right;">171</p> <p>1 Q. Was Dreyer's somewhat later than  2 others getting on the Globe system?  3 <b>A. Yes. Correct.</b>  4 Q. Do you know when that -- you don't  5 know --  6 <b>A. No idea. Don't even know if it's in</b>  7 <b>there now.</b>  8 Q. And what would be the plants that  9 would be related to Dreyer's? It would be  10 Laurel?  11 <b>A. Yeah. Laurel.</b>  12 Q. Bakerdale --  13 <b>A. Bakersfield.</b>  14 Q. Bakersfield.  15 <b>A. Tulare, Houston.</b>  16 Q. St. Louis?  17 <b>A. St. Louis.</b>  18 Q. Salt Lake City?  19 <b>A. Salt Lake City.</b>  20 Q. Do you know whether or not that data  21 is in SAP?  22 <b>A. I do not.</b>  23 Q. Who would know?  24 <b>A. Probably somebody on our IT side. I</b>  25 <b>don't know the answer to that.</b></p>	<p style="text-align: right;">173</p> <p>1 Do you recognize data reflected in  2 this fashion?  3 <b>A. Sales data?</b>  4 Q. Correct.  5 <b>A. Or purchase data?</b>  6 Q. I'm sorry. Purchase data. I  7 apologize.  8 <b>A. Well, I recognize what it looks</b>  9 <b>like. This is 2001 to '5. I was not here at</b>  10 <b>the time, so I can't -- I can't say yes or no.</b>  11 Q. Have you ever had occasion to review  12 sales data prior to 2006?  13 <b>A. No, I have not for any reason.</b>  14 MR. CAMPBELL: You have misspoke.  15 You meant purchase data.  16 MR. BOETTGE: I apologize. I meant  17 purchase data. Thank you.  18 MR. CAMPBELL: Did you mark this,  19 Doug?  20 MR. BOETTGE: I did. I think  21 it's --  22 THE WITNESS: 10.  23 MR. BOETTGE: 10.  24 MR. CAMPBELL: 10. Okay.  25 MR. BOETTGE: Let's take a short</p>

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<p style="text-align: right;">174</p> <p>1 break.</p> <p>2 THE VIDEOGRAPHER: Off the record.</p> <p>3 Of the time is 12:05.</p> <p>4 (Recess taken.)</p> <p>5 THE VIDEOGRAPHER: We're back on the</p> <p>6 record. The time is 12:17.</p> <p>7 BY MR. BOETTGE:</p> <p>8 Q. Mr. Feyman, we spoke earlier about</p> <p>9 the possibility that the transaction data from</p> <p>10 Dreyer's is not on Globe, correct?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Do you recall that?</p> <p>13 And I just want to know how I would</p> <p>14 know whether it's not there, and is one way I</p> <p>15 could learn whether the information is not on</p> <p>16 Globe is by looking at all of the plant</p> <p>17 locations and if I do not see Laurel, I would be</p> <p>18 confident that I do not have the transaction</p> <p>19 data for Dreyer's?</p> <p>20 <b>A. Yes. But transaction was supplied a</b></p> <p>21 <b>different format for the Dreyer's businesses.</b></p> <p>22 <b>You have them.</b></p> <p>23 Q. You believe that information was</p> <p>24 separately supplied?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">176</p> <p>1 for most things we buy, due to our competitive</p> <p>2 position in the finished product marketplace."</p> <p>3 What's your understanding as to what</p> <p>4 Mr. Hill is referring to as "being as close to</p> <p>5 the market as possible"?</p> <p>6 <b>A. As close to the Urner Berry price as</b></p> <p>7 <b>possible.</b></p> <p>8 Q. And what did you understand was his</p> <p>9 reason for wanting to be as close to the Urner</p> <p>10 Berry market as possible?</p> <p>11 <b>A. Because of the competitive product</b></p> <p>12 <b>marketplace.</b></p> <p>13 Q. What does that mean?</p> <p>14 <b>A. Everybody makes ice cream the same</b></p> <p>15 <b>way.</b></p> <p>16 Q. So if the competitors are also using</p> <p>17 Urner Berry pricing market to purchase their</p> <p>18 eggs, then Dreyer's would also want to use the</p> <p>19 Urner Berry market as a basis to price its eggs?</p> <p>20 <b>A. I don't think that's what it's</b></p> <p>21 <b>saying.</b></p> <p>22 Q. Then what is it saying?</p> <p>23 <b>A. It's saying that if we're not close</b></p> <p>24 <b>to the market and somebody else is, we have a</b></p> <p>25 <b>competitive disadvantage.</b></p>
<p style="text-align: right;">175</p> <p>1 Q. So we've talked about formula</p> <p>2 pricing that's not grain-based pricing.</p> <p>3 Is that pricing that's based on</p> <p>4 Urner Berry?</p> <p>5 <b>A. Urner Berry breaking stock, yes.</b></p> <p>6 Q. And is that based on monthly Urner</p> <p>7 Berry price quotations?</p> <p>8 <b>A. It could be average monthly, yes.</b></p> <p>9 Q. How about quarterly?</p> <p>10 <b>A. Possibly.</b></p> <p>11 Q. And I think we discussed in a</p> <p>12 fixed-priced contract, again, you don't know for</p> <p>13 certain how the vendor set their price for that</p> <p>14 period of time of the contract, correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Let's take a look at what we've</p> <p>17 marked as Trask 11. And there's an e-mail from</p> <p>18 John Hill on the bottom of the first page to</p> <p>19 Bill Trask copying yourself and Steve Warner.</p> <p>20 Do you see that e-mail?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And there's a comment from Mr. Hill</p> <p>23 on the first paragraph, "As I think you know,</p> <p>24 Dreyer's senior management has a very strong</p> <p>25 bias to being as close to the market as possible</p>	<p style="text-align: right;">177</p> <p>1 Q. So there was a desire to use the</p> <p>2 same pricing methodology that Dreyer's</p> <p>3 competitors used?</p> <p>4 <b>A. I don't think that's what it's</b></p> <p>5 <b>saying. I think it's saying we've got to use</b></p> <p>6 <b>the methodology to get us closest to the market.</b></p> <p>7 Q. And then tell me, again, your</p> <p>8 understanding as to what is the competitive</p> <p>9 position a reference to then.</p> <p>10 <b>A. Not knowing how our competition is</b></p> <p>11 <b>pricing their eggs or buying their eggs. We</b></p> <p>12 <b>know the lowest costs would be close to the</b></p> <p>13 <b>actual market as possible, so keep me close to</b></p> <p>14 <b>the market.</b></p> <p>15 Q. And this is a reference from</p> <p>16 Dreyer's.</p> <p>17 Did you understand that to be a</p> <p>18 similar belief or desire from the other</p> <p>19 divisions from which you purchased eggs?</p> <p>20 <b>A. No, it is not.</b></p> <p>21 Q. This is unique to Dreyer's?</p> <p>22 <b>A. That's correct.</b></p> <p>23 Q. How were others different?</p> <p>24 <b>A. Eggs play a much smaller impact on</b></p> <p>25 <b>the cost of goods to build the products, and,</b></p>

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<p style="text-align: right;">178</p> <p>1 <b>therefore, it's not so critical.</b></p> <p>2 Q. Not so critical to be what?</p> <p>3 <b>A. Away from the market.</b></p> <p>4 Q. You mentioned approximately 24</p> <p>5 million annual spend on eggs for Nestlé,</p> <p>6 correct?</p> <p>7 <b>A. That's correct.</b></p> <p>8 Q. What portion of that is eggs for</p> <p>9 Dreyer's?</p> <p>10 <b>A. I do not know a separation.</b></p> <p>11 Q. How would you know?</p> <p>12 <b>A. I'd have to run a query in the</b></p> <p>13 <b>system.</b></p> <p>14 Q. Let's go to what's been marked as</p> <p>15 Trask 12.</p> <p>16 <b>A. 12, you say? Correct.</b></p> <p>17 Q. This is an e-mail from Bill Trask to</p> <p>18 Mr. Mace, copying you.</p> <p>19 There's a comment, the</p> <p>20 second sentence -- well, let's begin at the top.</p> <p>21 "Ballas is now running even with Michael Foods."</p> <p>22 Do you know what that's a reference</p> <p>23 to?</p> <p>24 <b>A. No, I do not.</b></p> <p>25 Q. And the next statement, "Unless the</p>	<p style="text-align: right;">180</p> <p>1 associated with Dreyer's?</p> <p>2 <b>A. Yeah. He's the -- he's the NBS,</b></p> <p>3 <b>Nestlé Business Services representative</b></p> <p>4 <b>stationed at Dreyer's.</b></p> <p>5 Q. Got it.</p> <p>6 So this is an e-mail relating to</p> <p>7 purchases for Dreyer's?</p> <p>8 <b>A. Mm-hmm.</b></p> <p>9 Q. Does Dreyer's purchase egg whites?</p> <p>10 <b>A. No, they do not. Well, I don't know</b></p> <p>11 <b>the answer to that.</b></p> <p>12 Q. But you understand principally</p> <p>13 Dreyer's would be purchasing yolks?</p> <p>14 <b>A. Yolks.</b></p> <p>15 Q. And so why is there a reference here</p> <p>16 to whites if Dreyer's is purchasing yolks?</p> <p>17 <b>A. If whites climb in value, yolks</b></p> <p>18 <b>could potentially drop.</b></p> <p>19 Q. Is that what your understanding</p> <p>20 normally occurs?</p> <p>21 <b>A. That's the only thing that could be</b></p> <p>22 <b>referring to. It doesn't always occur that way.</b></p> <p>23 Q. So let's go to Exhibit 12,</p> <p>24 Trask -- I'm sorry. Trask 13.</p> <p>25 <b>A. 13, right.</b></p>
<p style="text-align: right;">179</p> <p>1 whites start climbing in value, I would start</p> <p>2 leaning on Michael Foods to deliver product."</p> <p>3 Do you know what that's in reference</p> <p>4 to?</p> <p>5 <b>A. It could be which to buy from the</b></p> <p>6 <b>same material. We saw that previously.</b></p> <p>7 Q. Where Michael Foods is offering the</p> <p>8 fixed price and Ballas is the formula price?</p> <p>9 <b>A. Well, it could be either/or. It</b></p> <p>10 <b>could be either direction. They're just saying</b></p> <p>11 <b>switch it around.</b></p> <p>12 Q. Let's go to Trask Exhibit 13. Let</p> <p>13 me go back to 12.</p> <p>14 There's the reference to whites, egg</p> <p>15 whites, correct?</p> <p>16 <b>A. On 12?</b></p> <p>17 Q. Yes.</p> <p>18 <b>A. Where?</b></p> <p>19 Q. Second sentence, "Unless the whites</p> <p>20 start climbing in value."</p> <p>21 <b>A. Okay.</b></p> <p>22 Q. And Monte Mace was with Dreyer's,</p> <p>23 correct?</p> <p>24 <b>A. No. Monte Mace is with NBS.</b></p> <p>25 Q. Okay. Was he at a time in 2008</p>	<p style="text-align: right;">181</p> <p>1 Q. Was the pricing relationship between</p> <p>2 yolk and white something that Nestlé looked at?</p> <p>3 <b>A. Not really. It was anecdotal for us</b></p> <p>4 <b>because it changes nothing.</b></p> <p>5 Q. What do you mean "it changes</p> <p>6 nothing"?</p> <p>7 <b>A. The -- if we're on a formula price</b></p> <p>8 <b>with breaking stock, it doesn't change the value</b></p> <p>9 <b>of breaking stock. If we're on a fixed price</b></p> <p>10 <b>off of Urner Berry history, it doesn't change</b></p> <p>11 <b>Urner Berry history.</b></p> <p>12 Q. If we look at Exhibit 13, this is an</p> <p>13 e-mail from Mr. Lewis to John Hill. You're</p> <p>14 copied, and there's a comment, "Granted, it does</p> <p>15 not get into what if scenarios should a</p> <p>16 replacement be found for yolks, but I wanted to</p> <p>17 address the questions about why yolks haven't</p> <p>18 followed wholes and whites closely when they've</p> <p>19 shown weakness."</p> <p>20 What is that reference to?</p> <p>21 <b>A. There must have been some type of</b></p> <p>22 <b>discussion about how much those yolks are</b></p> <p>23 <b>costing and somebody in R&amp;D must be working on a</b></p> <p>24 <b>replacement for them. You know, instead of</b></p> <p>25 <b>buying yolks. That's the only thing I can</b></p>

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<p style="text-align: right;">182</p> <p>1 <b>assume.</b></p> <p>2 Q. And possibly buying a different</p> <p>3 product to substitute?</p> <p>4 <b>A. Maybe. It never happened that I'm</b></p> <p>5 <b>aware of.</b></p> <p>6 Q. Let's take a look at the next page.</p> <p>7 And there's a description under the bullet Why.</p> <p>8 And again, do you understand Why to</p> <p>9 be answering the question, why the price of</p> <p>10 yolks have not always followed the price of</p> <p>11 whites?</p> <p>12 <b>A. Let me see. Let me read it.</b></p> <p>13 <b>(Document review.)</b></p> <p>14 <b>Okay. Now your question is?</b></p> <p>15 Q. The question is: What is the</p> <p>16 question Why? What is this purporting to</p> <p>17 answer?</p> <p>18 <b>A. The market situation above.</b></p> <p>19 Q. And the market situation being yolks</p> <p>20 being the price leader compared to wholes and</p> <p>21 whites?</p> <p>22 <b>A. I would say so, yes.</b></p> <p>23 Q. And what does that mean to you?</p> <p>24 <b>A. That means at the current time yolks</b></p> <p>25 <b>are in demand, therefore, they're going up in</b></p>	<p style="text-align: right;">184</p> <p>1 <b>read it three times and I don't agree with some</b></p> <p>2 <b>of the parts of the statement. So I didn't</b></p> <p>3 <b>write it. I can't explain it.</b></p> <p>4 Q. What do you not agree with?</p> <p>5 <b>A. The relationship of -- comparing</b></p> <p>6 <b>vital wheat gluten to other -- I don't know what</b></p> <p>7 <b>they're trying to say here.</b></p> <p>8 Q. Is it fair to say you just don't</p> <p>9 understand what they're trying to say here?</p> <p>10 <b>A. I don't understand it.</b></p> <p>11 Q. Not that you disagree, you just</p> <p>12 don't understand?</p> <p>13 <b>A. I've never heard anybody compare</b></p> <p>14 <b>wheat gluten to egg whites.</b></p> <p>15 Q. You understand that's what's being</p> <p>16 done here?</p> <p>17 <b>A. It appears to be, but I don't think</b></p> <p>18 <b>this makes sense to me.</b></p> <p>19 Q. What about the next bullet. "Low</p> <p>20 white demand means that if an egg is separated</p> <p>21 to provide yolks, yolks are going to bear the</p> <p>22 majority of the cost."</p> <p>23 <b>A. Yes. True.</b></p> <p>24 Q. And what do you understand that to</p> <p>25 mean?</p>
<p style="text-align: right;">183</p> <p>1 <b>price.</b></p> <p>2 Q. Would you agree that factors other</p> <p>3 than the supply of yolk drive the price of yolk?</p> <p>4 <b>A. Demand. Demand drives the price of</b></p> <p>5 <b>yolk, yeah.</b></p> <p>6 Q. Do factors other than supply or</p> <p>7 demand drive the price of yolk?</p> <p>8 <b>A. No, not in my opinion.</b></p> <p>9 Q. What about the demands for white?</p> <p>10 Would that have any impact on price of yolk?</p> <p>11 <b>A. It could, but doesn't. If for some</b></p> <p>12 <b>reason there was a huge demand for white, then</b></p> <p>13 <b>you'd end up with a surplus of yolk, so you'd</b></p> <p>14 <b>have a drop of price, but that's never happened</b></p> <p>15 <b>that I'm aware of.</b></p> <p>16 Q. Let's take a look at the Why here as</p> <p>17 explaining this yolk white pricing. "Relatively</p> <p>18 inelastic demand due to few alternatives versus</p> <p>19 egg whites, which compete against other</p> <p>20 proteins."</p> <p>21 Do you see that?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Is this a recognition that whites</p> <p>24 have more substitutes or alternatives available?</p> <p>25 <b>A. I don't know what that means. I've</b></p>	<p style="text-align: right;">185</p> <p>1 <b>A. It means if -- if you're breaking</b></p> <p>2 <b>eggs to get yolks, the whites are left behind,</b></p> <p>3 <b>so somebody has got to pay for that egg. So the</b></p> <p>4 <b>yolk is going to be a premium price. The white</b></p> <p>5 <b>is going to stay behind and get dried.</b></p> <p>6 Q. Let's go to Trask 14.</p> <p>7 This is an e-mail from Mr. Lewis to</p> <p>8 Bill Trask. You're copied.</p> <p>9 <b>A. Mm-hmm.</b></p> <p>10 Q. And the e-mail at the bottom of</p> <p>11 page 1 is a note to Mr. Lewis and Mr. Trask, and</p> <p>12 he references, "It may be applicable for Buitoni</p> <p>13 or cookie dough."</p> <p>14 And then the top e-mail suggests</p> <p>15 from Mr. Lewis, "This might be a way to further</p> <p>16 reduce eggs in Toll House cookie dough since it</p> <p>17 involves replacing egg protein with whey</p> <p>18 protein."</p> <p>19 Do you see that?</p> <p>20 <b>A. I want to read that.</b></p> <p>21 Q. Sure.</p> <p>22 <b>A. (Document review.) Okay. And the</b></p> <p>23 <b>question is?</b></p> <p>24 Q. Is this a reference to a possibility</p> <p>25 of replacing or reducing the amount of eggs with</p>

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<p style="text-align: right;">186</p> <p>1 an alternative source of protein?</p> <p>2 <b>A. It seems to refer to that.</b></p> <p>3 Q. Was it your experience that some egg</p> <p>4 product purchasers reduced the amount of eggs by</p> <p>5 replacing those eggs with a non-egg substitute?</p> <p>6 <b>A. It's not my experience.</b></p> <p>7 Q. You're not familiar with that?</p> <p>8 <b>A. Not familiar with it.</b></p> <p>9 Q. Do you know what the result of this</p> <p>10 direction from Mr. Warner was?</p> <p>11 <b>A. I do not, and it's never happened.</b></p> <p>12 Q. What do you mean "it's never</p> <p>13 happened"?</p> <p>14 <b>A. We didn't replace eggs.</b></p> <p>15 Q. There's that comment in the first</p> <p>16 full sentence, "This might be a way to further</p> <p>17 reduce eggs in Toll House cookie dough."</p> <p>18 Do you see that?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Had the eggs in Toll House cookie</p> <p>21 dough been reduced?</p> <p>22 <b>A. I wouldn't know because this was</b></p> <p>23 <b>dated August 29th, which would be one day after</b></p> <p>24 <b>I joined the company. So I don't know what the</b></p> <p>25 <b>past was.</b></p>	<p style="text-align: right;">188</p> <p>1 <b>affairs.</b></p> <p>2 Q. How long has she held that title?</p> <p>3 <b>A. Through my tenure, so it's at least</b></p> <p>4 <b>2008.</b></p> <p>5 Q. And you understand she has</p> <p>6 affiliations with Food Marketing Institute?</p> <p>7 <b>A. I think so.</b></p> <p>8 Q. And also with Grocers Manufacturing</p> <p>9 Association?</p> <p>10 <b>A. I think so, yes.</b></p> <p>11 Q. What have you spoken to her about in</p> <p>12 connection with those two groups?</p> <p>13 <b>A. Nothing.</b></p> <p>14 Q. Have you spoken to anyone at Nestlé</p> <p>15 about Nestlé's affiliation with those two</p> <p>16 groups?</p> <p>17 <b>A. I asked my assistant to check and</b></p> <p>18 <b>see if we were associated with FMI and she</b></p> <p>19 <b>reported back to me that public affairs says</b></p> <p>20 <b>we're a member of FMI and GMA.</b></p> <p>21 Q. Did you learn anything other than</p> <p>22 the fact that Nestlé was members of those</p> <p>23 organizations?</p> <p>24 <b>A. Nothing whatsoever.</b></p> <p>25 Q. That was it?</p>
<p style="text-align: right;">187</p> <p>1 Q. Is Nestlé a member of any trade</p> <p>2 group?</p> <p>3 <b>A. I believe we're a member of a number</b></p> <p>4 <b>of them. I know we're a member of GMA, Grocery</b></p> <p>5 <b>Manufacturers Association, and I think FMI as</b></p> <p>6 <b>well.</b></p> <p>7 Q. Do you have any involvement with</p> <p>8 either of those groups?</p> <p>9 <b>A. None whatsoever.</b></p> <p>10 Q. Did you ever have any discussions</p> <p>11 with anyone at Nestlé who does have contacts</p> <p>12 with either of those groups?</p> <p>13 <b>A. Yes, I do.</b></p> <p>14 Q. Who are those individuals?</p> <p>15 <b>A. Ros O'Hearn, who's our</b></p> <p>16 <b>vice president of public affairs.</b></p> <p>17 Q. Say that name again.</p> <p>18 <b>A. Ros O'Hearn, O ' H-E-A-R-N.</b></p> <p>19 Q. Rossum [sic]?</p> <p>20 <b>A. Ros. Oh, I'm sorry. Ros is the</b></p> <p>21 <b>first name. Rosalyn.</b></p> <p>22 Q. Got it.</p> <p>23 <b>A. And the last name, O'Hearn, O'Hearn.</b></p> <p>24 Q. What's her title?</p> <p>25 <b>A. She's vice president of public</b></p>	<p style="text-align: right;">189</p> <p>1 <b>A. That was it.</b></p> <p>2 THE WITNESS: Take that off the</p> <p>3 record so these people will let me go, you know?</p> <p>4 I'm a learner.</p> <p>5 BY MR. BOETTGE:</p> <p>6 Q. Do you know or have any awareness of</p> <p>7 Food Marketing Institute addressing the issue of</p> <p>8 animal welfare?</p> <p>9 <b>A. I think that in some of my blurbs I</b></p> <p>10 <b>get in e-mail I've seen something, but I don't</b></p> <p>11 <b>recall specifically what it is, and I'm not in</b></p> <p>12 <b>the newsletter or anything like that.</b></p> <p>13 Q. What about GMA? Do you have any</p> <p>14 understanding that GMA has --</p> <p>15 <b>A. I know nothing about them.</b></p> <p>16 Q. What do you recall from the e-mails</p> <p>17 that you received that FMI is involved or has</p> <p>18 addressed the issue of animal welfare?</p> <p>19 <b>A. Very little, except I seem to have a</b></p> <p>20 <b>remote recollection of seeing some reference to</b></p> <p>21 <b>it. Didn't ponder it. Didn't pay too much</b></p> <p>22 <b>attention to it.</b></p> <p>23 Q. Who at Nestlé would be most</p> <p>24 knowledgeable as to the roles that FMI has</p> <p>25 played in connection with animal welfare?</p>

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<p style="text-align: right;">190</p> <p>1       <b>A. I would have to say Ros O'Hearn</b>  2       <b>would be the one.</b>  3       <b>Q. And that's the name with GMA?</b>  4       <b>A. I think that's where we have to</b>  5       <b>start, yes.</b>  6       <b>Q. Any other trade groups that you're</b>  7       <b>aware of?</b>  8       <b>A. Not that I'm aware of.</b>  9       <b>Q. Are animal welfare issues important</b>  10       <b>to Nestlé?</b>  11       <b>A. Yes, they are.</b>  12       <b>Q. Why?</b>  13       <b>A. The condition of animals is</b>  14       <b>paramount in food quality, food safety.</b>  15       <b>Additionally, our consumers don't want animals</b>  16       <b>to be harmed in the making of their food or</b>  17       <b>inhumanely treated. We as an organization feel</b>  18       <b>a responsibility to the environment and to the</b>  19       <b>animals, that they shouldn't suffer.</b>  20       <b>Q. Have you been aware of any</b>  21       <b>initiatives within Nestlé on the subject of</b>  22       <b>animal welfare?</b>  23       <b>A. It's now included in our -- part of</b>  24       <b>our sustainability audits.</b>  25       <b>Q. What do you mean by that?</b></p>	<p style="text-align: right;">192</p> <p>1       <b>on animal welfare since the end of 2008, so it's</b>  2       <b>an initiative that has been growing in strength</b>  3       <b>in all the years since then. So it wasn't one</b>  4       <b>starting point.</b>  5       <b>Q. Is the sustainable audit something</b>  6       <b>that's new?</b>  7       <b>A. The actual formal audit is something</b>  8       <b>that's new, but the inspection of facilities</b>  9       <b>that sell to us has been going on for a long,</b>  10       <b>long time.</b>  11       <b>Q. And do you know when the inspections</b>  12       <b>began looking at how hens were treated?</b>  13       <b>A. No, I do not, and I don't know if</b>  14       <b>they've been done yet on the sustainability</b>  15       <b>group. That's a brand new process.</b>  16       <b>Q. Okay. This process of looking at</b>  17       <b>how hens are treated is -- in your understanding</b>  18       <b>that's new?</b>  19       <b>A. No. The sustainability group on the</b>  20       <b>special audit is new. The inspection of</b>  21       <b>facilities that supply to us is at least ten</b>  22       <b>years old and they would not approve of a place</b>  23       <b>that was treating animals inhumanely.</b>  24       <b>Q. Do you know if their standards have</b>  25       <b>changed over the past ten years --</b></p>
<p style="text-align: right;">191</p> <p>1       <b>A. We want to ensure that the vendors</b>  2       <b>we buy from are not doing more harm than good</b>  3       <b>and are making sure that these agricultural</b>  4       <b>commodities continue to be able to be available</b>  5       <b>to future generations, and so animal welfare is</b>  6       <b>one of the considerations that they go out and</b>  7       <b>rate the vendor, they make sure of humane</b>  8       <b>treatment.</b>  9       <b>Q. In connection with eggs, what does</b>  10       <b>that mean?</b>  11       <b>A. If -- well, it's not if. When the</b>  12       <b>plant is inspected, their factory would get a</b>  13       <b>failing grade if they were discovered to have</b>  14       <b>unsanitary conditions that weren't good for the</b>  15       <b>birds or the eggs or if the birds were</b>  16       <b>unnecessarily suffering.</b>  17       <b>Q. What criteria would the audit group</b>  18       <b>use to determine if the birds were suffering?</b>  19       <b>A. I do not know. I'm not intimidated</b>  20       <b>with the standards.</b>  21       <b>Q. Who would know?</b>  22       <b>A. Central audit group, I believe.</b>  23       <b>Q. And when did that initiative come</b>  24       <b>into being?</b>  25       <b>A. We've been putting increasing focus</b></p>	<p style="text-align: right;">193</p> <p>1       <b>A. I do not.</b>  2       <b>Q. -- as to whether an animal being</b>  3       <b>treated inhumanely?</b>  4       <b>A. I do not. I only get a pass/fail</b>  5       <b>and it's not input.</b>  6       <b>Q. Have you had any discussions with</b>  7       <b>anyone as to what is involved in determining</b>  8       <b>whether animals are being treated humanely?</b>  9       <b>A. No, I have not.</b>  10       <b>Q. Are you aware of any egg vendors</b>  11       <b>failing a test as to their animals not being</b>  12       <b>treated humanely?</b>  13       <b>A. Not that's supplied to me.</b>  14       <b>Q. Egg vendors that supply --</b>  15       <b>A. Oh, I thought you said ag vendors.</b>  16       <b>Agricultural.</b>  17       <b>Q. I'm sorry.</b>  18       <b>A. No, I don't know of any that have</b>  19       <b>failed.</b>  20       <b>Q. Other than the sustainable audit</b>  21       <b>process, are you aware of any corporate</b>  22       <b>statement or announcement of principles relating</b>  23       <b>to animal welfare?</b>  24       <b>A. There are statements out on our</b>  25       <b>website that's available to the public and to</b></p>

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<p style="text-align: right;">194</p> <p>1 <b>vendors.</b></p> <p>2 Q. Do you know if those statements have</p> <p>3 changed?</p> <p>4 <b>A. I do not.</b></p> <p>5 Q. Who would know?</p> <p>6 <b>A. I think probably public affairs</b></p> <p>7 <b>manages the information out there.</b></p> <p>8 Q. Is public affairs also the group</p> <p>9 that would make the decision whether to change</p> <p>10 any aspect of its animal welfare statement?</p> <p>11 <b>A. No, I think there would be more</b></p> <p>12 <b>people involved, but I'm not sure whom. It</b></p> <p>13 <b>would probably come from Vevey.</b></p> <p>14 Q. From who?</p> <p>15 <b>A. Vevey, Switzerland, our parent</b></p> <p>16 <b>company.</b></p> <p>17 Q. Are you aware of any announcements</p> <p>18 from Switzerland regarding animal welfare?</p> <p>19 <b>A. I am not.</b></p> <p>20 Q. So other than the sustainability</p> <p>21 audits that you understand there's been kind of</p> <p>22 a movement toward more -- well, why don't you</p> <p>23 describe what you mean by evolution with respect</p> <p>24 to the sustainable audits.</p> <p>25 <b>A. Well, over a period of time the</b></p>	<p style="text-align: right;">196</p> <p>1 <b>A. I can't answer that. I don't do the</b></p> <p>2 <b>audits. I don't see the actual results. I just</b></p> <p>3 <b>see the outcome.</b></p> <p>4 Q. So when you mention there's kind of</p> <p>5 been a growing focus on animal welfare, what do</p> <p>6 you base that statement on?</p> <p>7 <b>A. I base that on the introduction of</b></p> <p>8 <b>the animal welfare matter into the responsible</b></p> <p>9 <b>sourcing audits.</b></p> <p>10 Q. Pause there. Introduction of the</p> <p>11 animal welfare --</p> <p>12 <b>A. As a part of responsible sourcing.</b></p> <p>13 Q. And that used to not be part of</p> <p>14 responsible sourcing?</p> <p>15 <b>A. No. It wasn't responsible sourcing</b></p> <p>16 <b>audits that were done previously.</b></p> <p>17 Q. So I'm confused.</p> <p>18 Were there two different types of</p> <p>19 audits?</p> <p>20 <b>A. Yeah, two different audits, correct.</b></p> <p>21 <b>One is for food safety --</b></p> <p>22 Q. Okay. And the food safety audits</p> <p>23 have been done for as long as you can remember?</p> <p>24 <b>A. That's correct.</b></p> <p>25 Q. And you're not sure whether animal</p>
<p style="text-align: right;">195</p> <p>1 <b>focus on the audits have broadened. In fact,</b></p> <p>2 <b>they're, really under what's called RSA,</b></p> <p>3 <b>responsible sourcing audits, that cover all</b></p> <p>4 <b>these issues.</b></p> <p>5 Q. So if I understand, for the past ten</p> <p>6 years, egg vendors have been audited.</p> <p>7 <b>A. All vendors have been audited.</b></p> <p>8 Q. Okay. And do you have an</p> <p>9 understanding as to ten years ago, whether those</p> <p>10 audits included the welfare of the hens?</p> <p>11 <b>A. I do not know. I can only go back</b></p> <p>12 <b>to eight years ago, seven years ago, when I</b></p> <p>13 <b>started, and, yes, it would include that. We</b></p> <p>14 <b>would not buy from somebody who is mistreating</b></p> <p>15 <b>animals.</b></p> <p>16 Q. And again, whether an animal was</p> <p>17 mistreated or not was something that you don't</p> <p>18 know how that was determined?</p> <p>19 <b>A. I don't know.</b></p> <p>20 Q. And you don't know whether that's</p> <p>21 changed, the standard as to whether a hen is</p> <p>22 being mistreated or not?</p> <p>23 <b>A. No, I do not know.</b></p> <p>24 Q. So what do you understand has</p> <p>25 changed with respect to audits of egg vendors?</p>	<p style="text-align: right;">197</p> <p>1 welfare is looked at in connection with a food</p> <p>2 safety audit?</p> <p>3 <b>A. No. I am sure that an inspector who</b></p> <p>4 <b>sees an animal being mistreated will report it</b></p> <p>5 <b>and we will not be able to buy from them because</b></p> <p>6 <b>that's the standards that we operate under.</b></p> <p>7 Q. But separately you're aware of a</p> <p>8 movement toward responsible source audits?</p> <p>9 <b>A. An improvement into the auditing of</b></p> <p>10 <b>those particular areas, humane treatment of</b></p> <p>11 <b>animals. Sustainability of the agricultural</b></p> <p>12 <b>commodity. Fair and equitable pay to the people</b></p> <p>13 <b>that are doing the work.</b></p> <p>14 Q. And do you know whether, in fact,</p> <p>15 there have been any responsible source audits of</p> <p>16 egg vendors yet?</p> <p>17 <b>A. I do not.</b></p> <p>18 Q. And likewise, you wouldn't know what</p> <p>19 standards are being used to determine welfare?</p> <p>20 <b>A. I do not.</b></p> <p>21 Q. And that would be public affairs who</p> <p>22 would be most knowledgeable?</p> <p>23 <b>A. I think that's the place to go, yes.</b></p> <p>24 Q. Other than the movement to</p> <p>25 responsible source audits, are you aware of any</p>

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<p style="text-align: right;">198</p> <p>1 other changes in the company's policy regarding 2 animal welfare? 3 <b>A. No.</b> 4 Q. Do you know why the company has 5 changed and is now moving toward responsible 6 source audits? 7 <b>A. I don't think it's changed. I think</b> 8 <b>it's evolved into covering more and more areas.</b> 9 Q. And why? What's your understanding 10 is the reason? 11 <b>A. It's good for people. It's good for</b> 12 <b>the environment. Without sustainability, there</b> 13 <b>will be nothing to harvest to put in these</b> 14 <b>foods. And food safety is the utmost concern.</b> 15 MR. CAMPBELL: Watch your mic. 16 THE WITNESS: Go ahead. 17 Sorry about that. 18 BY MR. BOETTGE: 19 Q. Other than public affairs, are there 20 any groups at Nestlé involved in any aspect of 21 the promotion or consideration of animal 22 welfare? 23 <b>A. I don't believe so.</b> 24 Q. When did Nestlé first learn of the 25 UEP animal welfare program?</p>	<p style="text-align: right;">200</p> <p>1 of the UEP program? 2 <b>A. I do not know.</b> 3 Q. Who would know? 4 <b>A. I don't know that either.</b> 5 Q. Do you know if Nestlé believed that 6 the certified program would have an impact on 7 egg supply? 8 <b>A. I don't know.</b> 9 Q. And likewise, do you know if Nestlé 10 believed the certified program would have an 11 impact on prices? 12 <b>A. I don't know that either.</b> 13 Q. Currently, does Nestlé have an 14 understanding that the certified program has had 15 an impact on supply? 16 <b>A. I believe it has from understanding</b> 17 <b>the basis to this lawsuit.</b> 18 Q. Separate from that, does Nestlé 19 have -- 20 <b>A. Separate from the lawsuit, I</b> 21 <b>wouldn't have an opinion on it affecting supply.</b> 22 Q. How does Nestlé believe the 23 certified program has impacted prices? 24 MR. CAMPBELL: Object to that. 25 Instruct him not to answer to the extent that</p>
<p style="text-align: right;">199</p> <p>1 <b>A. I can't answer that. It was</b> 2 <b>the -- they had knowledge of it when I arrived</b> 3 <b>here.</b> 4 THE REPORTER: I'm sorry, it was 5 what? 6 THE WITNESS: They had knowledge of 7 it prior to my start here. 8 BY MR. BOETTGE: 9 Q. Did you do anything to educate 10 yourself as to Nestlé's reaction to that UEP 11 program prior to you starting at the company? 12 <b>A. I did not.</b> 13 Q. And what is Nestlé's understanding 14 of the UEP program? 15 <b>A. Nestlé or mine?</b> 16 Q. As the corporate representative, 17 let's go with Nestlé. 18 <b>A. UEP is a group of egg producers who</b> 19 <b>joined together in order to ensure that the</b> 20 <b>animals were treated humanely, and if you</b> 21 <b>complied, you got a UEP certification.</b> 22 Q. Is that your personal understanding 23 as well? 24 <b>A. That's correct.</b> 25 Q. Does Nestlé support the preservation</p>	<p style="text-align: right;">201</p> <p>1 the answer would depend upon discussions with 2 counsel. If he has independent knowledge of 3 that, then he may answer. 4 THE WITNESS: Independently, if all 5 the egg producers were together, aside from just 6 considering the safety of the animals, they have 7 to discuss outputs or controlling outputs or 8 killing excess birds that could get into the 9 laying flock, it would have a group in one 10 industry doing everything that they're not 11 supposed to be doing, and that's discuss pricing 12 and supply. So it would effect price. 13 BY MR. BOETTGE: 14 Q. How would it affect price? 15 <b>A. If they adjusted supply based upon</b> 16 <b>that group's discussions.</b> 17 Q. Do you have any knowledge that, in 18 fact, they did adjust supply? 19 <b>A. I do not.</b> 20 Q. Do you have any understanding as to 21 whether there's any relationship between the 22 certified program and supply? 23 <b>A. I do not.</b> 24 Q. And likewise, I'll ask on behalf of 25 Nestlé.</p>

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<p style="text-align: right;">202</p> <p>1 Does Nestlé have any understanding 2 as to a relationship between the certified 3 program and the supply of hens? 4 MR. CAMPBELL: Again, I object to 5 the extent that Nestlé's understanding comes 6 from my advice to Nestlé -- 7 THE WITNESS: Right. 8 MR. CAMPBELL: -- as its counsel, 9 then I instruct you not to answer. 10 But if Nestlé, to your knowledge, 11 any understanding outside of that, then you may 12 answer. 13 THE WITNESS: No, I do not. I do 14 not. 15 BY MR. BOETTGE: 16 Q. And again, speaking on behalf of -- 17 <b>A. Speaking on behalf of myself.</b> 18 Q. How about as Nestlé as the corporate 19 representative? 20 THE WITNESS: I was not instructed 21 not to answer. 22 MR. CAMPBELL: Well, no. You may 23 answer if you know whether Nestlé as opposed to 24 you has any knowledge about that. 25 THE WITNESS: Ask the question</p>	<p style="text-align: right;">204</p> <p>1 or Humane Society or like groups had contacted 2 Nestlé with animal welfare concerns? 3 <b>A. I did not.</b> 4 Q. What do you understand about this 5 most recent contact by PETA? 6 <b>A. I actually think it was a palm oil 7 or something unrelated to anything I buy, 8 someplace in southeast Asia. I know very little 9 about it. I just had heard that we were 10 contacted.</b> 11 Q. Understand. 12 So specific to eggs, are you aware 13 of any contact by an animal rights group like 14 the Humane Society or PETA contacting Nestlé as 15 to how its vendors treat hens that supply eggs 16 to Nestlé? 17 <b>A. No, I do not.</b> 18 Q. Does Nestlé purchase cage-free eggs? 19 <b>A. Yes.</b> 20 Q. For what groups? 21 <b>A. Dreyer's Ice Cream.</b> 22 Q. When did Nestlé decide to purchase 23 cage free for Dreyer's? 24 <b>A. Approximately four years ago.</b> 25 Q. Who supplies those eggs?</p>
<p style="text-align: right;">203</p> <p>1 again. 2 BY MR. BOETTGE: 3 Q. Okay. 4 <b>A. On a field here.</b> 5 Q. On behalf of Nestlé -- 6 <b>A. Yes.</b> 7 Q. -- does Nestlé have any 8 understanding as to the relationship between the 9 certified program and the supply of hens? 10 <b>A. I do not believe so.</b> 11 Q. Are you aware of any animal welfare 12 groups like the Humane Society or PETA 13 approaching Nestlé about animal welfare? 14 <b>A. Yes.</b> 15 Q. What are you aware of that? 16 <b>A. We've been contacted by PETA.</b> 17 Q. When did that occur? 18 <b>A. In the last year, I believe.</b> 19 Q. Do you know if they were contacted 20 earlier by PETA? 21 <b>A. I do not.</b> 22 Q. Possible they were; you don't know? 23 <b>A. Anything is possible.</b> 24 Q. Did you do anything to educate 25 yourself for this deposition as to whether PETA</p>	<p style="text-align: right;">205</p> <p>1 <b>A. I don't recall.</b> 2 Q. Who was involved in making the 3 decision? 4 <b>A. Dreyer's Ice Cream marketing. I 5 don't know the person's name.</b> 6 Q. Do you know why they made that 7 decision? 8 <b>A. Because their major competitor 9 was -- had done it.</b> 10 Q. So this is like UEP -- purchase of 11 UEP eggs following Ben &amp; Jerry's? 12 <b>A. Correct.</b> 13 Q. Any other groups at Nestlé purchase 14 cage-free eggs? 15 <b>A. No.</b> 16 Q. Does Nestlé take animal welfare 17 standards into account when making egg product 18 purchase decisions? 19 <b>A. Just right now it has to be UEP 20 certified.</b> 21 Q. And I think we talked, you're not 22 familiar when that occurred? 23 <b>A. No, I am not.</b> 24 Q. To your knowledge, was that in place 25 when you started in August of 2008?</p>

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<p style="text-align: right;">206</p> <p>1 <b>A. I don't believe so.</b></p> <p>2 Q. I think you indicated Nestlé was</p> <p>3 purchasing UEP certified eggs, to your</p> <p>4 understanding, back to 2007, correct?</p> <p>5 <b>A. I think so.</b></p> <p>6 Q. But when you began in August 2008,</p> <p>7 it wasn't requiring all of its egg suppliers to</p> <p>8 be UEP certified, correct?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. So I guess that would lead to the</p> <p>11 conclusion that some of the eggs Nestlé was</p> <p>12 buying at that time were certified and some were</p> <p>13 not certified, correct?</p> <p>14 <b>A. I believe so.</b></p> <p>15 Q. And why was it that some of the eggs</p> <p>16 Nestlé was buying were certified and some were</p> <p>17 not?</p> <p>18 <b>A. I don't think all the suppliers were</b></p> <p>19 <b>UEP certified at that time. That would be</b></p> <p>20 <b>my -- my guess at it. I don't know the answer</b></p> <p>21 <b>to it otherwise.</b></p> <p>22 Q. Doesn't Nestlé always have the</p> <p>23 ability to change suppliers to require UEP</p> <p>24 certification?</p> <p>25 <b>A. It depends on the timing. Are we in</b></p>	<p style="text-align: right;">208</p> <p>1 started, or when you started, you had an</p> <p>2 understanding that the UEP certified requirement</p> <p>3 existed as to only one part of Nestlé, correct?</p> <p>4 <b>A. The UEP eggs that were coming in</b></p> <p>5 <b>were by happenstance. Somebody who was selling</b></p> <p>6 <b>us that had UEP eggs, that's what we took. And</b></p> <p>7 <b>over the period of time, we realized the</b></p> <p>8 <b>importance of the experience and we expanded it.</b></p> <p>9 <b>So it wasn't by design one company, one brand.</b></p> <p>10 Q. Well, isn't it fair to say that at</p> <p>11 some point Dreyer's required UEP certified?</p> <p>12 <b>A. Yes. I think that started before I</b></p> <p>13 <b>came in.</b></p> <p>14 Q. Okay. And that was a hard, fast</p> <p>15 rule, correct?</p> <p>16 <b>A. That's correct, yes.</b></p> <p>17 Q. If you could not supply UEP</p> <p>18 certified eggs, you could not sell to Dreyer's,</p> <p>19 correct?</p> <p>20 <b>A. You understand correctly.</b></p> <p>21 Q. But that requirement that all eggs</p> <p>22 must be UEP certified was specific to Dreyer's</p> <p>23 at the time?</p> <p>24 <b>A. That was the only place that had the</b></p> <p>25 <b>requirement, yes.</b></p>
<p style="text-align: right;">207</p> <p>1 <b>contract or are other vendors approved. There's</b></p> <p>2 <b>many factors.</b></p> <p>3 Q. So is it your understanding when you</p> <p>4 started in August of 2008, there was a -- well,</p> <p>5 let me step back.</p> <p>6 Was it your testimony that when you</p> <p>7 began in 2008, Nestlé was purchasing some eggs</p> <p>8 that were not certified?</p> <p>9 <b>A. I believe so, yes.</b></p> <p>10 Q. And then at some later point,</p> <p>11 it -- well, let me step back.</p> <p>12 Was there a requirement in</p> <p>13 August 2008 when you started that all eggs</p> <p>14 should be UEP certified?</p> <p>15 <b>A. No.</b></p> <p>16 Q. That requirement came later?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. So prior to your starting, there was</p> <p>19 a requirement for some eggs purchased by Nestlé</p> <p>20 to be UEP certified, but that requirement didn't</p> <p>21 extend across the whole company?</p> <p>22 <b>A. No.</b></p> <p>23 Q. It did not extend -- bad question.</p> <p>24 <b>A. Yeah, bad question. Try it again.</b></p> <p>25 Q. All right. So back before you</p>	<p style="text-align: right;">209</p> <p>1 Q. For other parts of Nestlé, there was</p> <p>2 not -- there was no requirement?</p> <p>3 <b>A. That's correct.</b></p> <p>4 Q. And your understanding is over time,</p> <p>5 Nestlé began to demand all of its eggs be UEP</p> <p>6 certified eggs?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And I think when I asked as to the</p> <p>9 reason that the requirement existed in some</p> <p>10 parts of the company, not other parts of the</p> <p>11 company, you were noting supply may not have</p> <p>12 been as prevalent?</p> <p>13 <b>A. Yeah, it may not have been the</b></p> <p>14 <b>vendor we were buying from as UEP certified.</b></p> <p>15 Q. Okay. But there was certainly a</p> <p>16 time where non-Dreyer's parts of the company did</p> <p>17 not require UEP certified eggs, correct?</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. Why was it that it was a requirement</p> <p>20 that Dreyer's have UEP certified eggs but at the</p> <p>21 same time there was not a requirement that other</p> <p>22 parts of Nestlé have UEP certified eggs?</p> <p>23 <b>A. They were meeting a competitive</b></p> <p>24 <b>situation.</b></p> <p>25 Q. I think you had mentioned earlier</p>

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<p style="text-align: right;">210</p> <p>1 discussions with others at Nestlé relating to 2 legislation in California relating to the 3 production of eggs. 4 Do you recall that? 5 <b>A. Yes, I do.</b> 6 Q. And what was your understanding as 7 to the impact of that legislation on Nestlé? 8 <b>A. The increased requirement of space 9 will drive out the egg producers in California, 10 thus, generating greater freight for me to 11 deliver eggs to California.</b> 12 Q. Do you recognize that a lack of 13 clarity as to animal welfare standards could 14 lead producers to not add capacity? 15 <b>A. Do I recognize it?</b> 16 Q. Yes. 17 <b>A. Possibly.</b> 18 Q. Why don't you take a look at Trask 19 15 for a moment. 20 <b>A. Okay.</b> 21 Q. And looking at the bottom e-mail on 22 the second page, it's an e-mail from a Mr. Lewis 23 to John Brommer. 24 Are you familiar with John Brommer? 25 <b>A. Yes, I am.</b></p>	<p style="text-align: right;">212</p> <p>1 Q. Looking at the top e-mail then from 2 Mr. Lewis. 3 <b>A. Are we still on 15?</b> 4 Q. We are. 5 <b>A. Okay.</b> 6 Q. -- to John Brommer and copying 7 Bill Trask, he thanks Mr. Brommer for providing 8 information about the upcharge, and he states, 9 "What we're doing is preparing to answer 10 questions if Häagen-Dazs' preference for UEP, by 11 implication, puts pressure on other Nestlé 12 brands." 13 Do you see that? 14 <b>A. Yes, I do.</b> 15 Q. What's your understanding as to what 16 Mr. Lewis means there? 17 <b>A. Use of UEP eggs at Häagen-Dazs could 18 lead to consumer pressure or marketing pressure 19 to get all brands into UEP.</b> 20 Q. Do you know at this time, 21 August 2008, does this reflect that Häagen-Dazs 22 was using UEP eggs? 23 <b>A. This is before my tenure.</b> 24 Q. You're right. By about two weeks, 25 right?</p>
<p style="text-align: right;">211</p> <p>1 Q. Who is John Brommer? 2 <b>A. John Brommer worked for, I think, 3 Michael Foods, but he sold us eggs. That's what 4 I know.</b> 5 Q. Okay. And there's a comment here 6 from Mr. Lewis, "What upcharge would there be if 7 Danville were to ask for UEP whole eggs." 8 Do you see that? 9 <b>A. Yes, I do.</b> 10 Q. And what's that a reference to? 11 <b>A. The higher cost that UEP eggs 12 demand.</b> 13 Q. What was Danville? 14 <b>A. Danville is Buitoni. It's a 15 factory.</b> 16 Q. So is this a question were 17 Michael Foods to supply -- were the eggs that 18 Michael Foods supplied to Buitoni converted to 19 UEP, would there be additional cost? 20 <b>A. That's how I read -- understand it.</b> 21 Q. So is it your understanding at that 22 time the eggs that were being supplied were not 23 UEP? 24 <b>A. I think we can conclude that, but I 25 don't know that.</b></p>	<p style="text-align: right;">213</p> <p>1 <b>A. Yeah.</b> 2 Q. Yeah. Do you know when you started 3 whether Häagen-Dazs was using UEP eggs? 4 <b>A. I do not.</b> 5 Q. You don't know either way? 6 <b>A. I don't know either way.</b> 7 Q. Are you aware of discussions at the 8 company as to pressure if some brands of Nestlé 9 were using UEP certified but other brands were 10 not? 11 <b>A. I'm not -- I've never been involved 12 in any discussions such as that.</b> 13 Q. Does this e-mail reflect there was 14 some discussion of that pressure? 15 <b>A. I don't know what drove Mr. Lewis to 16 write it.</b> 17 Q. Let's go to the next document, 18 Trask 16. 19 <b>A. Whoops. I jump from 15 to 16 to 17. 20 What does that look like?</b> 21 THE WITNESS: Let me take yours. 22 MR. CAMPBELL: Take that. 23 THE WITNESS: Okay. 24 BY MR. BOETTGE: 25 Q. And here now you're copied on the</p>

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<p style="text-align: right;">214</p> <p>1 top e-mail; it's an e-mail from Dale Bohman.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And I want to take a look at the</p> <p>4 last page -- well, let's step back.</p> <p>5 The subject is September CFO update.</p> <p>6 Do you see that at the bottom of the</p> <p>7 first e-mail?</p> <p>8 <b>A. Yes, I do.</b></p> <p>9 Q. Do you understand this to be a CFO</p> <p>10 update?</p> <p>11 <b>A. Yes, I do.</b></p> <p>12 Q. Okay. Did purchasing update the CFO</p> <p>13 from time to time relating to eggs?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. How frequently did it provide the</p> <p>16 updates?</p> <p>17 <b>A. I'm not trying to be a wise guy. It</b></p> <p>18 <b>was -- we updated the CFO quarterly, but not on</b></p> <p>19 <b>every -- every material, every quarter.</b></p> <p>20 Q. Got it.</p> <p>21 If you note, the first bullet point</p> <p>22 discusses a strategy "moving between fixed and</p> <p>23 formula pricing as markets dictate."</p> <p>24 Do you see that?</p> <p>25 <b>A. Yes, I do.</b></p>	<p style="text-align: right;">216</p> <p>1 <b>A. Discussions just about them?</b></p> <p>2 Q. Yes.</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. What do you understand about those</p> <p>5 discussions?</p> <p>6 <b>A. Availability and additional cost.</b></p> <p>7 Q. And your understanding is</p> <p>8 Häagen-Dazs today uses UEP certified egg?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And do you recall when Häagen-Dazs</p> <p>11 began to use certified egg?</p> <p>12 <b>A. Sometime in 2008, I think, it</b></p> <p>13 <b>started.</b></p> <p>14 Q. Let's go to what's been marked as</p> <p>15 Exhibit 17.</p> <p>16 <b>A. I think I got 17.</b></p> <p>17 Q. And let's go to the second page of</p> <p>18 the exhibit, and let's start at the bottom</p> <p>19 e-mail, which is from Denise Shurney.</p> <p>20 Do you see that?</p> <p>21 <b>A. Yes, I do.</b></p> <p>22 Q. And are you familiar with</p> <p>23 Miss Shurney?</p> <p>24 <b>A. Yes, I know Denise.</b></p> <p>25 Q. Is she still with the company?</p>
<p style="text-align: right;">215</p> <p>1 Q. What's your understanding as to what</p> <p>2 is mean by that?</p> <p>3 <b>A. Move from a fixed price against the</b></p> <p>4 <b>Uerner Berry historical breaking stock to a</b></p> <p>5 <b>formula price which is breaking stock plus</b></p> <p>6 <b>overages.</b></p> <p>7 Q. And again, when you say fixed price</p> <p>8 based on historical Uerner Berry, again, you</p> <p>9 don't know how a producer has set their fixed</p> <p>10 price; is that correct?</p> <p>11 <b>A. That is true.</b></p> <p>12 Q. And in the next bullet is, "Evaluate</p> <p>13 alternatives to sugar yolks in Häagen-Dazs."</p> <p>14 Do you know what that's a reference</p> <p>15 to?</p> <p>16 <b>A. Not at all.</b></p> <p>17 Q. In the last bullet. "Challenge use</p> <p>18 of animal welfare eggs in Häagen-Dazs."</p> <p>19 Again, do you have an understanding</p> <p>20 as to what was being meant by challenging the</p> <p>21 use of animal welfare eggs?</p> <p>22 <b>A. I do not.</b></p> <p>23 Q. Do you recall any discussions at</p> <p>24 Nestlé relating to the use of certified eggs in</p> <p>25 Häagen-Dazs product?</p>	<p style="text-align: right;">217</p> <p>1 <b>A. Yes, she is.</b></p> <p>2 Q. Does she work in the same group that</p> <p>3 Ros O'Hearn works?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Ros O'Hearn is public affairs?</p> <p>6 <b>A. Public affairs.</b></p> <p>7 Q. This is regulatory affairs.</p> <p>8 <b>A. Regulatory affairs.</b></p> <p>9 Q. And how are they different?</p> <p>10 <b>A. Regulatory affairs deals with the</b></p> <p>11 <b>conformance to the government regulations.</b></p> <p>12 Q. And there's a comment that</p> <p>13 Miss Shurney makes at the bottom of this second</p> <p>14 page. "Animal raising claims are an</p> <p>15 informative, consumer communication that could</p> <p>16 differentiate our products from our</p> <p>17 competitors."</p> <p>18 Do you agree with that statement?</p> <p>19 <b>A. I think that's her opinion. I don't</b></p> <p>20 <b>agree with it.</b></p> <p>21 Q. You don't agree with it?</p> <p>22 <b>A. No.</b></p> <p>23 Q. What is it that you disagree with?</p> <p>24 <b>A. This is my personal disagreement. I</b></p> <p>25 <b>don't believe that animal claims are a driver of</b></p>

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<p style="text-align: right;">218</p> <p>1 <b>food buying decisions.</b></p> <p>2 Q. Do you understand animal raising</p> <p>3 claims could differentiate Nestlé products from</p> <p>4 another manufacturer's product?</p> <p>5 <b>A. They may, but I'm not a marketing</b></p> <p>6 <b>person. I'm a buyer.</b></p> <p>7 Q. Do you have an understanding that</p> <p>8 the comment made by Miss Shurney relating to</p> <p>9 animal raising claims as a means to</p> <p>10 differentiate products being an opinion that was</p> <p>11 held by others at Nestlé?</p> <p>12 <b>A. I do not know that.</b></p> <p>13 Q. Let's look at the e-mail directly</p> <p>14 above that from Mr. Lewis, which you're copied,</p> <p>15 and there's a reference about "We are addressing</p> <p>16 this issue with Häagen-Dazs right now.</p> <p>17 Häagen-Dazs wants to use animal welfare eggs.</p> <p>18 We pay a premium for those and are limited in</p> <p>19 our supplier base."</p> <p>20 Do you see that?</p> <p>21 <b>A. Yes, I do.</b></p> <p>22 Q. Does that refresh your recollection</p> <p>23 as to whether Häagen-Dazs at this time was using</p> <p>24 certified eggs?</p> <p>25 <b>A. Well, this was written in October.</b></p>	<p style="text-align: right;">220</p> <p>1 end of the e-mail, "A side issue that Mary may</p> <p>2 be aware of is what does an animal welfare claim</p> <p>3 by one Nestlé brand imply about other Nestlé</p> <p>4 brands."</p> <p>5 What did you understand Mr. Lewis to</p> <p>6 mean there?</p> <p>7 <b>A. It's a great question. If you</b></p> <p>8 <b>broadcast that you're using animal welfare eggs</b></p> <p>9 <b>for Häagen-Dazs, what does that say? If you</b></p> <p>10 <b>don't say a bunch of other brands would mean</b></p> <p>11 <b>you're not using animal welfare eggs. So it</b></p> <p>12 <b>just error of omission or too much information.</b></p> <p>13 <b>You tell me.</b></p> <p>14 Q. And that would create a concern for</p> <p>15 Nestlé?</p> <p>16 <b>A. Of course, because you don't want to</b></p> <p>17 <b>give people the wrong impression.</b></p> <p>18 Q. And how would that be conveying a</p> <p>19 wrong impression?</p> <p>20 <b>A. If you're touting it from one brand,</b></p> <p>21 <b>you must be selecting that brand and doing</b></p> <p>22 <b>something special for it as opposed to all your</b></p> <p>23 <b>brands. So if you're not going to do it for</b></p> <p>24 <b>all, don't tout it for one.</b></p> <p>25 Q. Do you know how that question was</p>
<p style="text-align: right;">219</p> <p>1 <b>I said I -- I know that I thought it started in</b></p> <p>2 <b>2008, so that would support what I say, no?</b></p> <p>3 Q. Do you have an understanding from</p> <p>4 looking at this e-mail whether at this time</p> <p>5 Häagen-Dazs was using certified eggs?</p> <p>6 <b>A. I don't know. I just don't recall.</b></p> <p>7 <b>I can't tell you.</b></p> <p>8 Q. Understood.</p> <p>9 A reference to H-D wanting to use</p> <p>10 animal welfare eggs.</p> <p>11 Do you see that?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. What did you understand was meant by</p> <p>14 animal welfare eggs?</p> <p>15 <b>A. UEP. That's the only thing that I</b></p> <p>16 <b>knew of as a terminology.</b></p> <p>17 Q. The reference to paying a premium 3</p> <p>18 to \$400,000 for those, "those" being animal</p> <p>19 welfare UEP certified eggs?</p> <p>20 <b>A. I believe that's correct.</b></p> <p>21 Q. And limited in supplier base, what</p> <p>22 does that mean?</p> <p>23 <b>A. Not all our vendors were UEP</b></p> <p>24 <b>certified.</b></p> <p>25 Q. And then there's a comment at the</p>	<p style="text-align: right;">221</p> <p>1 resolved at Nestlé?</p> <p>2 <b>A. There was no concerted effort to</b></p> <p>3 <b>convert everybody over to UEP eggs in any one</b></p> <p>4 <b>fell swoop.</b></p> <p>5 Q. Say that again.</p> <p>6 <b>A. There was no directive to convert</b></p> <p>7 <b>everybody to UEP eggs with a deadline or one</b></p> <p>8 <b>fell swoop. Do it as you can.</b></p> <p>9 Q. Again, and that's a distinction from</p> <p>10 Dreyer's which was a one fell swoop, they must</p> <p>11 all be as to the others, do it as you can.</p> <p>12 <b>A. Right.</b></p> <p>13 Q. Do you understand more about that?</p> <p>14 Were there discussions you were involved in that</p> <p>15 reflected on this, do it as you can?</p> <p>16 <b>A. No. No. It's just we built it into</b></p> <p>17 <b>the budget and paid for it in future years.</b></p> <p>18 <b>That's all.</b></p> <p>19 Q. Were you involved in the decision</p> <p>20 for Nestlé to move to certified egg in these</p> <p>21 other divisions?</p> <p>22 <b>A. Not at all.</b></p> <p>23 Q. And that again came from the</p> <p>24 marketing group for each of the other divisions?</p> <p>25 <b>A. That's right. Or the leadership</b></p>

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<p style="text-align: right;">222</p> <p>1 <b>team in those divisions.</b></p> <p>2 Q. There's a comment here about the</p> <p>3 "Long-term impact be in terms of raw material</p> <p>4 supply?</p> <p>5 <b>A. Which paragraph are we on here?</b></p> <p>6 Q. This is that same e-mail from</p> <p>7 Mr. Lewis in the middle of the second page.</p> <p>8 <b>A. Well, they already -- Mr. Lewis</b></p> <p>9 <b>already warns that there's a limited amount of</b></p> <p>10 <b>animal welfare eggs just for Häagen-Dazs. I</b></p> <p>11 <b>think he's just cautioning that there may not be</b></p> <p>12 <b>enough for everybody if all the other brands</b></p> <p>13 <b>jump in.</b></p> <p>14 Q. Let's move then to the first page of</p> <p>15 the e-mail chain, and this is an e-mail from</p> <p>16 Mary Marr.</p> <p>17 Do you know who Mary Marr is?</p> <p>18 <b>A. I do not.</b></p> <p>19 Q. There's a comment on the second</p> <p>20 bullet of Miss Marr's October 24 e-mail. She</p> <p>21 states, "As for the specific notice listed</p> <p>22 below, Ed noted that we would be in favor of</p> <p>23 supporting standardized guidelines for 'animal</p> <p>24 raising claims' for meat and poultry."</p> <p>25 Did you have an understanding that</p>	<p style="text-align: right;">224</p> <p>1 I believe what we're talking</p> <p>2 about -- this is the second bullet, but I</p> <p>3 suggest you read the full bullet -- relates to</p> <p>4 animal raising claims.</p> <p>5 <b>A. Okay. (Document review.)</b></p> <p>6 <b>So they're trying to infer that</b></p> <p>7 <b>we're going to use high -- be animal welfare</b></p> <p>8 <b>conscious and make a claim and somebody else who</b></p> <p>9 <b>isn't animal welfare conscious is going to make</b></p> <p>10 <b>the same claim? Doesn't sound reasonable to me.</b></p> <p>11 <b>Is that what you think it means?</b></p> <p>12 Q. Let's step back.</p> <p>13 Why don't you explain to me what you</p> <p>14 understand Miss Marr was referring to in her</p> <p>15 e-mail.</p> <p>16 <b>A. I -- I -- it's too far afield. I</b></p> <p>17 <b>don't know her. This is somewhat a confusing</b></p> <p>18 <b>statement particularly and I'm afraid to try to</b></p> <p>19 <b>guess what she means. So I can't tell you what</b></p> <p>20 <b>she means.</b></p> <p>21 Q. And then Mr. Lewis forwards the</p> <p>22 e-mail to you and notes the discussion he had</p> <p>23 with Mary Marr.</p> <p>24 Do you see that at the top of the</p> <p>25 e-mail chain? Directly at the top?</p>
<p style="text-align: right;">223</p> <p>1 Nestlé was in favor of standardized guidelines?</p> <p>2 <b>A. For specifically animal raising</b></p> <p>3 <b>claims?</b></p> <p>4 Q. Correct.</p> <p>5 <b>A. Yeah, no, I was never aware of that.</b></p> <p>6 Q. Did you have discussions with anyone</p> <p>7 at Nestlé relating to the use of standardized</p> <p>8 animal welfare guidelines?</p> <p>9 <b>A. I have not.</b></p> <p>10 Q. In that last sentence of that same</p> <p>11 paragraph it notes, "We (Nestlé) hold ourselves</p> <p>12 to a very high standard."</p> <p>13 Do you agree with that?</p> <p>14 <b>A. Yes, I do.</b></p> <p>15 Q. "And with the current system another</p> <p>16 company could have an unfair competitive</p> <p>17 advantage making the same claim but using a low</p> <p>18 standard."</p> <p>19 Do you see that?</p> <p>20 <b>A. Yes, I do.</b></p> <p>21 Q. Do you agree that that would be a</p> <p>22 concern?</p> <p>23 <b>A. I don't even know what it means.</b></p> <p>24 <b>What claim are we talking about here?</b></p> <p>25 Q. Fair point.</p>	<p style="text-align: right;">225</p> <p>1 <b>A. Oh, yes, I do.</b></p> <p>2 Q. Okay. And do you recall having a</p> <p>3 discussion with Mr. Lewis about these topics?</p> <p>4 <b>A. Absolutely not.</b></p> <p>5 - - - - -</p> <p>6 <b>(Thereupon, Deposition Exhibit 11,</b></p> <p>7 <b>E-Mail Chain w/Attachment, Bates</b></p> <p>8 <b>Labeled NES00000394-00000396, was</b></p> <p>9 <b>marked for purposes of</b></p> <p>10 <b>identification.)</b></p> <p>11 - - - - -</p> <p>12 Q. What I'm showing you, Mr. Feyman,</p> <p>13 has been marked Feyman Exhibit 11. It's a</p> <p>14 document Bates numbered MF10259547. It's an</p> <p>15 e-mail from -- or it's correspondence addressed</p> <p>16 to Mr. Steve Warner.</p> <p>17 Do you see that?</p> <p>18 <b>A. I do, yes.</b></p> <p>19 Q. And I want to direct your attention</p> <p>20 to the fourth paragraph relating to RFP pricing.</p> <p>21 And there's a comment about</p> <p>22 "committed to packaging dried whole egg or yolks</p> <p>23 into super sack containers for the Danville</p> <p>24 plant."</p> <p>25 Do you see that?</p>

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<p style="text-align: right;">226</p> <p>1       <b>A. Yes, I do.</b>  2       Q. And was the opportunity to have  3 super sack containers a benefit to Nestlé?  4       <b>A. It would be a benefit.</b>  5       Q. How so?  6       <b>A. Less material handling, lower cost.</b>  7       Q. Do you know if all your suppliers  8 were able to provide super sack containers?  9       <b>A. I do not.</b>  10      Q. But that would be a consideration in  11 deciding to purchase eggs from Michael Foods,  12 the fact that they could supply super sack  13 containers, correct?  14      <b>A. Called a competitive advantage.</b>  15      THE WITNESS: I'm so tangled in this  16 chair.  17      MR. BOETTGE: Let's take a short  18 break.  19      THE VIDEOGRAPHER: The time is 1:22.  20 We're off the record.  21      (Recess taken.)  22      THE VIDEOGRAPHER: We're back on the  23 record. The time is 1:34.  24 BY MR. BOETTGE:  25      Q. I want to direct your attention to</p>	<p style="text-align: right;">228</p> <p>1       <b>A. I am not aware of any that do so.</b>  2       Q. You don't know one way or the other?  3       <b>A. No, I'm not aware of any that</b>  4 <b>provide a rebate.</b>  5       - - - - -  6       <b>(Thereupon, Deposition Exhibit 12,</b>  7 <b>E-Mail Chain w/Attachment, Bates</b>  8 <b>Labeled MFI0259554-0259555, was</b>  9 <b>marked for purposes of</b>  10 <b>identification.)</b>  11       - - - - -  12      Q. Showing you what we've marked as  13 Feyman Exhibit 12, and this is a document from  14 Michael Foods again.  15      <b>A. I didn't get a sticker on mine.</b>  16      Q. Oh, I apologize. You get the  17 stickered copy.  18      This is an e-mail from Michael Foods  19 MFI0259554. Again, I'm providing you a redacted  20 copy; provided your counsel with an unredacted  21 copy.  22      The e-mail at the bottom is from  23 Mr. Steve Warner to a Pres Colwell.  24      Do you see that?  25      <b>A. I do.</b></p>
<p style="text-align: right;">227</p> <p>1       what we marked yesterday as Trask Exhibit 18.  2 And this is an e-mail from Bill Trask to  3 yourself and Mr. Lewis comparing UEP, VPC and  4 Rembrandt's own policy.  5       Do you see that?  6       <b>A. Yes, I do.</b>  7       Q. Do you recall asking Mr. Trask for a  8 comparison of UEP, VPC and Rembrandt?  9       <b>A. I do not.</b>  10      Q. Do you know why Mr. Trask prepared  11 this?  12      <b>A. I do not.</b>  13      Q. Do you recall looking at and  14 analyzing the UEP program versus VPC and  15 Rembrandt's own policy?  16      <b>A. I do not.</b>  17      Q. And we talked earlier, Mr. Feyman,  18 with respect to the pricing that's reported on  19 the Globe software. An example would be the  20 Trask Exhibit 9.  21      Do you know if the prices that are  22 reflected there include any rebates?  23      <b>A. I do not know.</b>  24      Q. Are you aware of a vendor of eggs  25 providing Nestlé with rebates?</p>	<p style="text-align: right;">229</p> <p>1       Q. You understand -- well, let's look  2 at the e-mail from Mr. Warner. It notes in the  3 last sentence of the paragraph "We will also  4 agree that should we hit the million pound level  5 in Q4 shipments of whole, white and yolk powders  6 combined, Michael Foods will rebate Nestlé  7 \$150,000."  8       Do you see that?  9       <b>A. Yes, I do.</b>  10      Q. Do you recognize this as an example  11 of Michael Foods offering a rebate to Nestlé if  12 it met a certain volume threshold?  13      <b>A. I was not involved. I wasn't even</b>  14 <b>employed at the time. I don't recognize it, as</b>  15 <b>not knowing enough about it to tell you</b>  16 <b>anything.</b>  17      Q. Okay. I understand.  18      Fair to say prior to you arriving at  19 Nestlé, you don't know one way or the other  20 whether Michael Foods or other producers  21 provided a rebate for --  22      <b>A. Prior to my arrival, I cannot tell</b>  23 <b>you if they did or did not.</b>  24      Q. And again, you didn't do anything  25 before the deposition today to prepare you to</p>

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<p style="text-align: right;">230</p> <p>1 answer questions relating to whether rebates 2 were provided prior to your arrival at Nestlé? 3 <b>A. I did not.</b> 4 Q. Are you aware of any adjustments to 5 price that could occur that would not be 6 reflected in Globe? 7 <b>A. I am not -- since, you know, August</b> 8 <b>of 2008, I've made no adjustments to any pricing</b> 9 <b>or contract associated with discounts, rebates,</b> 10 <b>the like. The only adjustments could be made</b> 11 <b>would be made at the invoicing -- at the payment</b> 12 <b>of invoice time, if there were damages to</b> 13 <b>product and they didn't report it to the company</b> 14 <b>and the trucking company. Other than that,</b> 15 <b>there should be none. Or short ships.</b> 16 Q. Let's take a quick look at 17 Exhibit 10, which was the egg purchase data for 18 2000-2005. This is Feyman Exhibit 10. 19 <b>A. I'm getting there. 17.</b> 20 Q. It's right here. Sorry about that. 21 <b>A. Okay.</b> 22 Q. And let's look back to page 7. 23 And again, this is excerpted data, 24 this is the data that was provided by Nestlé in 25 the litigation.</p>	<p style="text-align: right;">232</p> <p>1 <b>would be an absolute appropriate way to make</b> 2 <b>that calculation.</b> 3 Q. Do you see that on the bottom it's 4 listed the custodian is SAP? 5 <b>A. Yeah.</b> 6 Q. Does that give you any greater 7 confidence that this is a document that you 8 could determine pricing from, or same answer, 9 don't know either way? 10 <b>A. I don't know either way.</b> 11 Q. Do you know if Dreyer's still 12 purchases egg products from Rose Acres? 13 <b>A. I do not know who the current</b> 14 <b>supplier is.</b> 15 Q. How about three months ago? 16 <b>A. I don't know either.</b> 17 Q. I asked three months ago. 18 <b>A. Yeah, I understand. I was answering</b> 19 <b>that way.</b> 20 Q. Okay. Don't know either way? 21 <b>A. Don't know either way.</b> 22 Q. Okay. 23 24 25</p>
<p style="text-align: right;">231</p> <p>1 And do you understand that this data 2 is aggregate purchases for an entire year? 3 <b>A. Let me just look here. (Document</b> 4 <b>review.)</b> 5 <b>It appears to be so, yes.</b> 6 Q. And would you assume that to 7 determine a price per pound; you could divide 8 total dollars by total pounds? 9 <b>A. I would -- I would hesitate to</b> 10 <b>support that premise.</b> 11 Q. You don't know either way? 12 <b>A. No. I would -- I believe it would</b> 13 <b>be an inaccurate calculation from this document.</b> 14 <b>I don't know what went into this document, and</b> 15 <b>all that has to do is miss one load of 40,000</b> 16 <b>pounds on some of these, and it's going to</b> 17 <b>change it dramatically.</b> 18 <b>So I can't support that and say,</b> 19 <b>yes, that would be a fair calculation, not from</b> 20 <b>this document.</b> 21 Q. You don't know one way or the other 22 whether that would be an appropriate way to 23 calculate price per pound, correct? 24 <b>A. If I was confident where the numbers</b> 25 <b>came from and how they were calculated, that</b></p>	<p style="text-align: right;">233</p> <p>1 - - - - - 2 (Thereupon, Deposition Exhibit 13, 3 E-Mail Chain, Bates Labeled 4 RAUUPDATE0013073, was marked for 5 purposes of identification.) 6 - - - - - 7 <b>A. Give me the sticker. Give me the</b> 8 <b>sticker.</b> 9 Q. Yes. Showing you, Mr. Feyman, what 10 we've marked as Feyman Exhibit 13. It's an 11 e-mail chain. It was produced -- or the Bates 12 number is RAUUPDATE0013073. 13 Do you see this document? 14 <b>A. Yes, I do.</b> 15 Q. And the bottom e-mail is from a 16 Jacki Pecek? 17 <b>A. Yes.</b> 18 Q. And she worked in purchasing for 19 eggs? 20 <b>A. Yes, she did.</b> 21 Q. And she's writing to Brad Ginnane of 22 Good Egg. 23 Do you see that? 24 <b>A. Yes, I do.</b> 25 Q. What is Good Egg?</p>

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<p style="text-align: right;">234</p> <p>1       <b>A. It must have been a vendor back in</b>  2       <b>2007. I'm not familiar with them.</b>  3       Q. Do you see an indication here -- or  4       do you understand any connection between Good  5       Egg and Rose Acre?  6       <b>A. No, I do not. I'm not aware of that</b>  7       <b>connection.</b>  8       Q. Does this suggest to you from  9       Miss Pecek that Nestlé is committing to sugared  10      egg yolks UEP for Fort Wayne and Houston?  11      <b>A. Yes, it does.</b>  12      Q. I'm showing you what has been marked  13      as Rose Acre -- I'm sorry -- as Feyman  14      Exhibit 14, Bates-stamped RAUPDATE0013130. It's  15      an e-mail from Jacki Pecek to, again, Brad  16      Ginnane. And Miss Pecek asks, "Is Rose Acre in  17      a position to be able to supply our Laurel,  18      Maryland facility with tankers of sugared egg  19      yolks."  20      Do you see that?  21      <b>A. Yes, I do.</b>  22  23  24  25</p>	<p style="text-align: right;">236</p> <p>1       <b>A. Correct.</b>  2       Q. And likewise, in those fixed-price  3       contracts, there's no agreement between Nestlé  4       and the vendor how that fixed price should be  5       determined, correct?  6       <b>A. Correct.</b>  7       MR. BOETTGE: I have nothing  8       further.  9       MR. CAMPBELL: I have no questions.  10      We will not waive signature. We'll read and  11      sign.  12      THE REPORTER: Okay.  13      THE VIDEOGRAPHER: This concludes  14      the deposition. The time is 1:46. We're off  15      the record.  16      (Discussion held off the record.)  17      - - - - -  18      MR. BOETTGE: Back on the record.  19      - - - - -  20      (Thereupon, Deposition Exhibit 15,  21      Nestle USA, Inc.'s Objections and  22      Amended Answers to Defendants' First  23      Set of Interrogatories, was marked  24      for purposes of identification.)  25</p>
<p style="text-align: right;">235</p> <p>1       - - - - -  2       (Thereupon, Deposition Exhibit 14,  3       E-Mail Chain, Bates Labeled  4       RAUPDATE0013130, was marked for  5       purposes of identification.)  6       - - - - -  7       Q. Does this refresh your recollection  8       that prior to the time of you joining, Dreyer's  9       purchased eggs from Rose Acre, or does this give  10      you any indication as to when --  11      <b>A. This indicates that they did. Well,</b>  12      <b>this indicates that they solicited for them. It</b>  13      <b>doesn't say there was a purchasing agreement</b>  14      <b>here. Pecek was soliciting for the need of</b>  15      <b>supply, but there's no confirmation.</b>  16      Q. Mr. Feyman, we talked earlier about  17      formula pricing versus fixed pricing, and I  18      understand the formula price -- or the fixed  19      pricing is pricing that stays consistent  20      throughout the term of the contract.  21      <b>A. Yes.</b>  22      Q. And I further understand from your  23      testimony that Nestlé doesn't have knowledge as  24      to how the vendor in a fixed-price contract set  25      that price, correct?</p>	<p style="text-align: right;">237</p> <p>1       - - - - -  2       (The following testimony is on  3       stenographic record only.)  4       BY MR. BOETTGE:  5       Q. Back on the record. I've shown  6       Mr. Feyman what I've marked as Exhibit 15. It's  7       Nestlé's Objections and Amended Answers to  8       Defendants' First Set of Interrogatories.  9       Do you see this?  10      <b>A. Yes, I do.</b>  11      Q. Have you seen this document before?  12      <b>A. Yes, I have.</b>  13      Q. And do you know whether you will be  14      verifying the answers to these interrogatories?  15      <b>A. I do not.</b>  16      MR. CAMPBELL: I don't know.  17      BY MR. BOETTGE:  18      Q. And for the record, it's my  19      understanding -- well, I understand counsel for  20      Nestlé will check that I have not yet received  21      verified answers to the interrogatories.  22      In reviewing these interrogatories  23      do you believe them to be accurate, the answers  24      to interrogatories?  25      <b>A. I do.</b></p>

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<p style="text-align: right;">238</p> <p>1 Q. The first interrogatory on page 3, 2 do you see that?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Asks, "If during the period covered 5 by your Complaint you made purchases...where you 6 expressly agreed that prices would be 7 determined, in whole or in part, on the basis of 8 the Urner Berry price quotation, then fully 9 describe each such agreement."</p> <p>10 Do you see that?</p> <p>11 <b>A. Yes, I do.</b></p> <p>12 Q. Is it your testimony, or do you have 13 an understanding as to whether a fixed-price 14 contract that we discussed earlier is a contract 15 where -- that Nestlé and the vendor expressly 16 agree that prices would be determined based on 17 Urner Berry?</p> <p>18 <b>A. Say it again.</b></p> <p>19 Q. Sure. I apologize.</p> <p>20 <b>A. It may be me. Maybe my ears are</b> 21 <b>scrambled.</b></p> <p>22 Q. Sure.</p> <p>23 I believe your testimony was with 24 respect to a fixed-price contract, there is no 25 agreement between the vendor and Nestlé that the</p>	<p style="text-align: right;">240</p> <p>1 MR. CAMPBELL: No, he's thinking. 2 THE WITNESS: I'm reading. 3 Okay. Go ahead. Ask that again. 4 BY MR. BOETTGE: 5 Q. Sure. 6 Just looking at the first part of 7 Interrogatory 2 that asks, "During the period 8 discovered by your Complaint you made purchases 9 of products where you did not expressly agree 10 that the prices would be determined on the basis 11 of Urner Berry quotation." 12 My question is: Does that concept 13 cover the fixed-price contracts that we 14 discussed today? 15 <b>A. Yes.</b> 16 Q. And then looking at the last 17 paragraph -- 18 <b>A. Of?</b> 19 Q. Page 6 of Interrogatory 2. It 20 states, subject to objections, "From the period 21 covered by the Complaint to the present, most of 22 its egg purchases were based, in whole or in 23 part, on prices that each supplier set based on 24 Urner Berry price quotations." 25 Does that reference exclude the</p>
<p style="text-align: right;">239</p> <p>1 prices would be determined based on Urner Berry; 2 is that correct?</p> <p>3 <b>A. That's correct.</b></p> <p>4 Q. So the fixed-price contracts would 5 be contracts that would be responsive to a 6 different interrogatory than what's listed here 7 as Interrogatory 1, correct?</p> <p>8 <b>A. I don't think I can answer that</b> 9 <b>without spending some time reading this.</b></p> <p>10 Q. Sure.</p> <p>11 Well, let me make sure I understand. 12 The question for Interrogatory 1 asks -- let me 13 withdraw that.</p> <p>14 Let's look to Interrogatory 15 Number 2.</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Which asks, "If during the period 18 covered by your Complaint you made purchases of 19 products where you did not expressly agree that 20 the prices would be determined in whole or part 21 on the basis of the Urner Berry quotation." 22 I'll stop there. Would that include 23 the fixed-price contracts that we discussed 24 during your deposition today? 25 THE REPORTER: Is that a yes?</p>	<p style="text-align: right;">241</p> <p>1 fixed-price contracts we discussed earlier 2 today?</p> <p>3 <b>A. Okay. Go ahead. Ask that question</b> 4 <b>again.</b></p> <p>5 Q. Sure.</p> <p>6 Following up from the earlier 7 question, does this reference that most of 8 Nestlé's egg purchases were based, in whole or 9 in part, on prices that each supplier set based 10 on Urner Berry price quotation, does that 11 reference purchases exclude those purchases that 12 were --</p> <p>13 <b>A. No. It does not exclude them.</b></p> <p>14 Q. And how does it include them?</p> <p>15 <b>A. The Urner Berry price history is the</b> 16 <b>industry Bible for seasonality of egg prices and</b> 17 <b>breaking stock prices. And we believe that is</b> 18 <b>used as a part of setting fixed-price contracts.</b></p> <p>19 Q. And again, you don't know that for 20 certainty?</p> <p>21 <b>A. I do not, but I can only answer --</b> 22 <b>take advice from counsel how best to phrase it,</b> 23 <b>but that's what we see.</b> 24 25</p>

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62 (Pages 242 to 245)

<p style="text-align: right;">242</p> <p>1 MR. BOETTGE: And I have nothing</p> <p>2 further.</p> <p>3</p> <p>4 (The deposition was concluded at 1:55 p.m.)</p> <p>5 - - - - -</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">244</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 The State of Ohio )</p> <p>4 ) SS:</p> <p>5 County of Cuyahoga. )</p> <p>6</p> <p>7 I, Donnalee Cotone, a Notary Public</p> <p>8 within and for the State of Ohio, duly</p> <p>9 commissioned and qualified, do hereby certify</p> <p>10 that the within named witness, STEVEN G. FEYMAN,</p> <p>11 was by me first duly sworn to testify the truth,</p> <p>12 the whole truth and nothing but the truth in the</p> <p>13 cause aforesaid; that the testimony then given</p> <p>14 by the above-referenced witness was by me</p> <p>15 reduced to stenotypy in the presence of said</p> <p>16 witness; afterwards transcribed, and that the</p> <p>17 foregoing is a true and correct transcription of</p> <p>18 the testimony so given by the above-referenced</p> <p>19 witness.</p> <p>20 I do further certify that this</p> <p>21 deposition was taken at the time and place in</p> <p>22 the foregoing caption specified and was</p> <p>23 completed without adjournment.</p> <p>24</p> <p>25 (Certificate continued on next page.)</p>
<p style="text-align: right;">243</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I, _____, do hereby</p> <p>4 acknowledge that I have read and examined the</p> <p>5 foregoing testimony, and the same is a true, correct</p> <p>6 and complete transcription of the testimony given by</p> <p>7 me, and any corrections appear on the attached Errata</p> <p>8 Sheet signed by me.</p> <p>9</p> <p>10</p> <p>11</p> <p>12 _____</p> <p>13 (DATE) (SIGNATURE)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">245</p> <p>1 (Certificate continued.)</p> <p>2</p> <p>3 I do further certify that I am not a</p> <p>4 relative, counsel or attorney for either party</p> <p>5 or otherwise financially interested in the</p> <p>6 events of this action; nor is the court</p> <p>7 reporting firm with which I am affiliated under</p> <p>8 a contract as defined in Civil Rule 28(D).</p> <p>9 IN WITNESS WHEREOF, I have hereunto</p> <p>10 set my hand and affixed my seal of office at</p> <p>11 Cleveland, Ohio, on this 1st day of</p> <p>12 May, 2014.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 Donnalee Cotone, Notary Public</p> <p>20 within and for the State of Ohio</p> <p>21</p> <p>22 My commission expires February 7, 2017.</p> <p>23</p> <p>24</p> <p>25</p>

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